



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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MEMORANDUM

SUBJECT: Superfund Accounts Receivable: Collection Actions for
Delinquent Accounts

FROM: Barry Breen, Director /Signed/
Office of Site Remediation Enforcement

Joseph Dillon, Comptroller /Signed/
Office of the Chief Financial Officer

TO: Superfund Legal Branch Chiefs, Regions I - X
Superfund Program Branch Chiefs, Regions I - X
Comptrollers, Regions I - X

I. Introduction

This guidance supersedes the Agency's interim guidance entitled "Delinquent Accounts Receivable: Interim Guidance on the Referral Process and Timing for Collection of Delinquent Debts Arising under Superfund Judicial or Administrative Settlements," OSRE, OCFO (Apr. 6, 2000).

The guidance retains the basic referral and collections procedures from the interim guidance, and addresses additional areas, including: judgments, bankruptcies, interest, and stipulated penalties. The guidance includes numerous appendices to assist Regions in their Superfund enforcement collection efforts. Appendix A is a flowchart of the collections process, appendix B summarizes the guidance, appendices C-I contain sample/model documents and enforcement and referral information, and appendix J lists selected guidance documents relating to the referral, collection, and compromise processes.¹

This guidance is intended solely for use by employees of EPA. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts.

¹ This guidance will be proposed for publication on EPA's internet WebSite:
<http://epa.gov/compliance/cleanup/> and EPA's internal WebSite: <http://intranet.epa.gov/oeca/osre/>.

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II. Background

The timely collection of Superfund accounts receivable remains a high priority for EPA.² EPA, in conjunction with the Department of Justice (“DOJ”), continues to evaluate the entire account receivable process, including billing, collection, compromise/termination, and data reconciliation between EPA’s Integrated Financial Management System (“IFMS”) and DOJ’s tracking systems.³ Headquarters is supporting these efforts through regional visits, quarterly meetings with DOJ, national meetings, the issuance of guidance documents, and periodic accounts receivable status reports. Sound fiscal policy and effective program management require the Agency to continue monitoring and emphasizing the timely processing of outstanding Superfund accounts receivable in order to maximize the return of recovered money to the Trust Fund so that it is available for future cleanups and to ensure that debt portfolios remain current.

Since the interim referral and debt collection guidance was issued in April 2000, EPA has gained experience in the processing and handling of delinquent accounts. The Agency has issued guidance on the compromise and termination of Superfund debts and a Senior Resource Official pilot performance measure to evaluate the timely processing of delinquent Superfund debt throughout the dispute resolution, referral, collection, and compromise processes.⁴ EPA is also revising Chapter 14, “Superfund Accounts Receivable and Billings,” of the Resource Management Directives System 2550D which will incorporate changes to the Superfund accounts receivable collection and compromise processes.

III. Processing of Superfund Accounts Receivable⁵

A. Timely Identification and Processing of Delinquent Accounts Receivable

At a minimum, Regions should perform monthly reviews (*i.e.*, every 30 days) of their accounts receivable to determine whether any accounts are delinquent. Most Regions find it helpful to perform reviews more frequently, and in some Regions reviews are performed on a daily, weekly, or bi-weekly basis which helps to reduce the time between when a delinquency occurs and when it is identified for follow up enforcement action.

When a payment is overdue on a sum-certain, date-certain debt arising under a judicial

² See “Improving Superfund Fiscal Management, Accounting and Cost Recovery,” OECA, OSWER, OCFO (Sept. 29, 2000).

³ As part of the reconciliation process, Regions are urged to keep the status of their accounts receivable current in IFMS.

⁴ See “Compromise and Termination of Collection Activity of Debts Arising out of Superfund Judicial and Administrative Settlements and Judgments (Post-Settlement and Post Judgment Superfund Debts),” OSRE, OCFO, DOJ-ENRD (Oct. 2, 2001) (“Compromise Memo”) and “Implementation of the pilot Senior Resource Official Performance Measure on Superfund Debt Collection,” OSRE, OCFO (Sept. 25, 2001).

⁵ This memorandum does not address debts arising under CERCLA Section 120, State Superfund Contracts, or contractor overpayments. For more information on the types of Superfund accounts receivable, see Chapter 14, *Superfund Accounts Receivable and Billings*, RMDS 2550D (1990).

agreement or court ordered judgment,⁶ DOJ should automatically seek to enforce and collect debt. Where necessary, the Region may want contact the Financial Litigation Unit (“FLU”) of the pertinent United States Attorney’s Office (“USAO”) to determine the status of the overdue account. In other cases of delinquent Superfund accounts (*e.g.*, debts arising under administrative settlements, oversight bills) the Regions should issue the debtor a “Notice of Non-Compliance” letter (“Non-Compliance letter”) (*see* revised letter, Appendix D) within fifteen (15) days of identifying the delinquent account, unless the receivable is the subject of dispute resolution as provided in an underlying agreement (or other resolution process, *e.g.*, bankruptcy). In general, the Non-Compliance letter should advise the party that payment is due immediately, interest is accruing, penalties may be due, and that EPA will refer any delinquent amounts to DOJ for collection if not paid within thirty (30) days from the date of the letter.⁷

If payment is not received within thirty (30) days, then the Region should refer the case to either DOJ’s Environment and Natural Resources Division (“ENRD”) or the National Central Intake Facility (“NCIF”) which coordinates collection cases for the FLUs.⁸ The referral should be sent no later than thirty (30) days after the payment due date in the Non-Compliance letter.

Regions may wish to revise an existing (or develop a new) internal memorandum of understanding (MOU) that delineates responsibilities for handling Superfund accounts receivable among the finance, program and legal offices to enhance the timely processing of accounts receivable. Appendix C is an example of a Regional MOU for coordination purposes.



⁶ Generally, a consent decree identifies a specific amount (“sum-certain”), due by a specific date (“date-certain”) that a party has agreed to pay EPA. For example, a party’s agreement to pay EPA’s “past response costs” is a sum-certain, date-certain debt (as opposed to a promise to pay “future response costs”). A court ordered judgment also identifies a specific amount of EPA response costs, but may not include a date-certain for payment.

⁷ If a party claims it has an inability to pay the debt, the Region should immediately issue a CERCLA Section 104(e) request for financial information to determine the debt’s collectibility. The Region should evaluate this information prior to referring the debt to DOJ for collection. If a party fails to respond to the Section 104(e) request or EPA determines that the party is able to pay, then the Region should refer the case to DOJ for collection within thirty (30) days of the party’s failure to respond or EPA’s determination that the party is able to pay. If a party does demonstrate an inability to pay, then the Region should refer to the Compromise Memo (*see* n. 4).

⁸ *See* Sections B & C of this memorandum. Administrative sum-certain, date-certain debts of \$1 million or less are referred to the NCIF and the FLU. All other debts are referred to DOJ-ENRD.

B. Accounts Receivable Arising from a Sum-certain Due on a Date-certain

1. Payments Due under Judicial Settlements and Court Ordered Judgments

a. Judicial Settlements

When a consent decree is negotiated prior to filing the complaint,⁹ EPA simultaneously refers the underlying claim with the consent decree to ENRD for lodging with the appropriate court. ENRD files the complaint, which triggers the jurisdiction of the court, and simultaneously lodges the consent decree with the court. After notice and an opportunity for public comment, and assuming no changes were required as a result of public comment, ENRD moves for entry of the consent decree by the court. Consent decrees also can be negotiated, lodged and entered in cases that are already pending in court and over which the court has existing jurisdiction.

Sum-certain, date-certain payments arising from a consent decree (e.g., past cost payments) are generally electronically transferred to the appropriate United States Attorney's Office. See "Memorandum of Understanding Between the United States Environmental Protection Agency and the United States Department of Justice on Procedures for Remittance of Superfund Debts through the Department of Justice Lockbox System," February 13, 1992 ("MOU").¹⁰ Nonpayment by a settling party triggers enforcement and collection efforts by the FLU without further notice from EPA. The USAO monitors the payment due dates and ensures that appropriate follow up action is taken to collect amounts due, including any interest accruals. DOJ has agreed to contact EPA if payment is not received within 30 days of the due date.¹¹ Where necessary, Regions may wish to periodically contact the appropriate FLU to determine the status of DOJ enforcement actions with respect to a delinquent account in this category.



DOJ-ENRD's thirty (30) day consent decree tracking report for CERCLA identifies when a decree is lodged, published, and entered. The Region's Financial Management Office ("FMO") receives this report. The Region can use the report to anticipate when a consent decree will become effective and to ensure timely receipt of the entered decree and establishment of an account receivable by the FMO.

⁹ See "Pre-Referral Negotiation Procedures for Superfund Enforcement Cases," OECM, OSWER (Oct. 12, 1990).

¹⁰ If a consent decree provides that payment will be sent to the EPA lockbox, then the Region should call the Headquarters staff listed at the end of this memorandum for assistance.

¹¹ MOU at ¶ 8. DOJ also provides quarterly reports to EPA's Financial Management Division on the status of all debts for which the United States Attorney's Office is responsible. The reports are available on EPA's internal internet WebSite: <http://intranet.epa.gov/ocfo/policies/freport/index.htm>. An updated directory of all FLUs is attached to this guidance (see Appendix E).

b. Court Ordered Judgments

When DOJ files an action against a responsible party to recover the United States' response costs, the court will determine the liability of the party. If the party is found liable for the government's response costs, the court enters a judgment in favor of the United States. The judgment identifies a sum-certain owed by the party to the United States. A judgment sometimes requires payment by a date-certain. EPA creates an account receivable in IFMS based on the court's entry of the judgment and order to pay.

The responsibility for enforcement of an unpaid judgment resides with DOJ. The Executive Office for the U.S. Attorneys ("EOUSA") and the NCIF track amounts specified in entered judgments. A delinquency on a scheduled payment should trigger enforcement and collection efforts by the appropriate U.S. Attorney's Office.¹² If the account receivable is not paid within sixty (60) days after the date that the judgment is entered and the party has not appealed the judgment within those sixty (60) days, EPA, where necessary, should contact the pertinent USAO to determine the steps being taken to enforce the judgment (*e.g.*, a writ of execution).

Key Points: Sum-Certain, Date-Certain Debts

- The U.S. Attorney's Office monitors payment due dates and ensures that appropriate follow up action is taken to collect amounts due.
- A party has 60 days to appeal a judgment from the date it is entered.
- Where necessary, EPA should contact the pertinent FLU to determine the status of DOJ enforcement actions.

2. Payment Due from a Party in Bankruptcy Proceedings¹³

When a settling party or potentially responsible party ("PRP") files for bankruptcy, the standard procedures for pursuing collection of a debt no longer apply. EPA must comply with the process set forth in the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and the Bankruptcy Rules of Procedure. The automatic stay of Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), prohibits debt collection activities outside the bankruptcy process, including execution on a money judgment, garnishment, and the filing of a lien. Violations of the automatic stay may be punishable by a contempt judgment.¹⁴

¹² See Memorandum from Barry Breen, Director, OSRE to Lynne Halbrooks, Principal Deputy Director, EOUSA (Mar. 30, 2001) and letter response from Ms. Halbrooks, EOUSA (May 29, 2001)(agreeing to aggressively pursue delinquent debts on EPA's behalf).

¹³ For more information on EPA's participation in bankruptcies, see "Guidance on EPA Participation in Bankruptcy Cases," OECA (Sept. 30, 1997).

¹⁴ The police and regulatory exceptions to the automatic stay do permit EPA to obtain judgments against debtors to secure their liability, but EPA cannot collect money judgments outside of the bankruptcy process.

The first step to pursuing collection in a bankruptcy case is filing a proof of claim.¹⁵ To collect against a party in bankruptcy, EPA, in almost all cases, must request DOJ to file a proof of claim against the debtor in the bankruptcy proceeding. In some instances, EPA's claim may be based upon a pre-existing consent decree, judgment, administrative agreement, or Administrative Order on Consent ("AOC") where the debtor is already legally required to pay the government's response costs or civil penalties, and an account receivable has already been established. Collection action on the receivable would be subject to the automatic stay mentioned above.

In most cases, however, EPA files a claim against a debtor/PRP where the amount of future response costs is based upon an rough estimate, and no final allocation among multiple PRPs has been made.¹⁶ When the proof of claim is filed for this type of claim (as opposed to where the Agency has a pre-existing account receivable), the FMO should record a memo entry for the claim amount in the 9000 series general ledger accounts of the IFMS. Because legal liability has not been formally determined through a settlement agreement or other binding document, and due to the uncertainty of recovering the claim amount, the amount claimed should be recorded and tracked by the Agency as a memo entry. Once the proof of claim is properly filed, the underlying claim is considered valid unless the debtor, trustee, or other party in interest files an objection. In some cases, the government may reach a settlement with the debtor during the bankruptcy process where the United States agrees to accept a reduction in the amount of its claim and the debtor agrees not to object to the claim as modified. Once the court approves a final bankruptcy plan, and EPA's claim is resolved, the memo entry will be eliminated and an account receivable for the amount of the claim shall be recorded within IFMS. If it is believed that a portion of the claim will not be received by the Agency, this amount will be recorded in IFMS as an allowance for doubtful accounts. Recording an allowance for this amount will provide a fairer representation of what the Agency can expect in the form of a collection.

Payment on claims usually occurs at the end of the bankruptcy process, often years after the bankruptcy case was filed. In some cases, there is no money to be paid to general unsecured creditors, and EPA receives nothing on account of its claim. In other cases, creditors will pay only a portion of their claim on a pro rata basis. It is difficult, if not impossible, to predict the ultimate payout in most bankruptcy cases.

Key Points: Bankruptcy

- The automatic stay in the bankruptcy code prohibits EPA debt collection activities.
- Unless EPA's claim is based on a pre-existing account receivable, a memo entry is made in IFMS when EPA files its proof of claim.
- Once the court approves a final bankruptcy plan, and EPA's claim is resolved, the memo entry will be eliminated and an account receivable for the amount of the claim shall be recorded within IFMS.
- Payment on claims usually occurs at the end of the process and often years after the proof of claim was filed.
- EPA should contact DOJ if it is unsure of the status of a bankruptcy case.

¹⁵ EPA does not file a proof of claim in every bankruptcy case. For more information on what factors EPA considers in deciding when to file a proof of claim, please review the Bankruptcy Guidance mentioned in *n.* 13.

¹⁶ In the absence of a final allocation, EPA files its claim based upon joint and several liability for all unrecovered response costs incurred or costs to be incurred at a site against a debtor PRP.

To determine the status of a bankruptcy proceeding, the Regional financial management office should contact the Regional enforcement office (usually the legal office) responsible for coordinating with DOJ on the case. If necessary, the enforcement office can contact DOJ to determine the status of the bankruptcy case.¹⁷

3. Payment of Past Costs under CERCLA Section 122(h) Administrative Agreements and Administrative Orders On Consent

Section 122 provides EPA with broad authority to enter into Superfund agreements. Section 122(h) specifically provides EPA with authority to enter into administrative agreements for recovery of costs, and subsection 122(h)(3) requires delinquent claims to be referred to the Attorney General.¹⁸ Examples of accounts receivable that may be established pursuant to Section 122(h) authority include: payments arising from a Section 122(h) “past costs” or “cashout” agreement or AOC; future response cost payments (*e.g.*, oversight) arising from AOCs for removal actions issued under the authority of Section 122; or an AOC with a “past cost” payment provision and a “future response cost payment” provision.

When a Region identifies a delinquent account receivable created from a sum-certain, date-certain obligation (*e.g.*, past cost payment) in a Section 122(h) administrative agreement or AOC, the Region should issue the debtor a Non-Compliance letter as identified in Section III(A) above. If the debtor fails to make the required payment, then the debt should be referred to DOJ for collection based on the following criteria:

- Where the unpaid principal amount is equal to or less than \$1,000,000 (exclusive of interest, costs, or penalties), the debt should be referred using the Claims Collection Litigation Report (“CCLR”) to the NCIF,¹⁹ which will forward it on to the appropriate FLU; and
- Where the unpaid principal amount is over \$1,000,000, the debt should be referred to DOJ-ENRD.²⁰

¹⁷ Each Region has a bankruptcy coordinator who ensures that bankruptcy notices are distributed to appropriate persons in the Region while multi-regional bankruptcy cases are coordinated by EPA Headquarters. Appendix F is a list of EPA and DOJ bankruptcy contacts.

¹⁸ *See also* “Guidance on Administrative Response Cost Settlements under Section 122(h) of CERCLA and Administrative Cashout Settlements with Peripheral Parties under Section 122(h) of CERCLA and Attorney General Authority,” OSRE, DOJ-ENRD, § V (Sept. 30, 1998) (EPA refers 122(h) cases to DOJ for collection based on Section 122(h)(3)).

¹⁹ NCIF’s address is in the attached FLU directory. Please use the attached Model Cover Letter and model CCLR form with accompanying instructions (Appendix G).

²⁰ Please follow the outline of referral requirements for judicial and administrative actions in Appendix H.



When using the CCLR remember to fill in line #66 (i.e., the box on the USAO acknowledgment form of the CCLR) with an EPA contact name and address so the Region can receive timely notification of when a claim was received by DOJ. If you do not hear back from the FLU within a reasonable time (e.g., 30 days) about a referred debt, please contact the pertinent FLU or follow up with one of the EPA staff listed at the end of this guidance.

C. Accounts Receivable Arising from Future Response Cost Bills

1. Collecting Unpaid Future Response Costs

Consent decrees, administrative agreements and AOCs entered into for the performance of response action generally have a future response cost reimbursement provision (e.g., oversight) that requires the settling party to pay EPA's future response costs. The Regional FMO creates the account receivable when EPA determines the amount due and prepares and sends a bill to the settling parties. A model future response cost bill is attached as Appendix I.

Typically, a party will have thirty (30) days after receipt to pay the bill and, under the terms of most settlements, the party will have the right to dispute all or a portion of the bill within that same thirty-day period. To properly invoke dispute resolution over future response costs, a party must meet certain conditions of the settlement.

For example, the Model RD/RA Consent Decree²¹ requires that a party:

- 1) invoke dispute resolution during the payment period (usually through written notification to the Agency);
- 2) rely on a proper basis for the dispute (i.e., accounting error, NCP inconsistency); and
- 3) pay EPA the amount of undisputed costs and place disputed amounts into an interest-bearing escrow account.²²

Key Points: Future Response Cost Bills

- Regardless of value, all delinquent future response cost bills, including those arising under an AOC or administrative agreement, are referred to DOJ-ENRD for enforcement.
- A party typically has until thirty (30) days after receipt to pay the bill.
- When a party fails to pay a bill and to timely invoke dispute resolution, EPA should issue a Non-Compliance letter that gives the party an additional fourteen (14) days to either pay the bill or invoke dispute resolution.
- When a party invokes dispute resolution, the Region's internal procedures should ensure that all appropriate offices (e.g., legal, program, and finance) are notified.
- Disputes over costs should be completed within 90 days (except where appealed) and referred to DOJ-ENRD within 30 days after the due date in EPA's final administrative decision.

²¹ See "Final Revisions to the Model RD/RA Consent Decree," OSRE, DOJ, (June 15, 2001) ("Model RD/RA Consent Decree").

²² Section XVI, ¶56(a) of the Model Consent Decree. In most cases, a party's failure to place money into an interest-bearing escrow account should prevent the party from disputing unpaid costs and should subject the party to an EPA enforcement action. For additional guidance on disputes over future response cost bills, See "CERCLA Future Response Costs: Settlement, Billing and Collection," OSRE-RSD (June 20, 2002).

If the party fails to pay the future response cost bill and does not properly invoke dispute resolution, then EPA should issue a Non-Compliance letter as prescribed in Section III(A) above. The letter, however, should give the party an additional fourteen (14) days to pay the bill or to invoke dispute resolution. A copy of the notice should be sent to the coordinating regional offices (*e.g.*, finance, legal, program, etc.). If the party still fails to pay the amounts owed or to invoke dispute resolution, then the Region should refer the case to DOJ-ENRD within thirty (30) days from the date of the Non-Compliance letter. Please follow the outline of referral requirements for judicial and administrative actions in Appendix H.

2. The Dispute Resolution Process

Most consent decrees, administrative agreements or AOCs with a future response cost section provide that when a settling party disputes costs in a bill and properly invokes the dispute resolution provision, a period of informal negotiations begins. If the dispute is not resolved informally, a period of formal negotiations begins. Formal negotiations end when EPA issues a final administrative decision. Consent decrees generally provide a right to review EPA's final administrative decision by the associated district court while administrative agreements do not.²³

Settlements vary on how long the dispute resolution process may take (*i.e.*, from the beginning of informal negotiations to the date EPA issues its final decision). Regions also vary in their methods of resolving disputes. For example, some Regions move quickly from informal to formal negotiations while others extend informal negotiations. In some cases, unresolved disputes over an initial bill are consolidated with disputes over costs in future bills, leaving the Agency with lingering unpaid future response costs. In some cases, these costs may be wrapped into negotiations over past costs during a subsequent stage of clean up negotiations.

The Agency's proposed time line for handling disputes of future response costs is shown below.

| Bill Sent | Dispute Invoked Money Escrowed | Written Position | Final EPA Decision |
|-----------------------|-----------------------------------|------------------------|-----------------------|
| V | V | V | V |
| * | * | * | * |
| Informal Negotiations | | Formal Negotiations | |
| 30 days | | (90 days to negotiate) | 120 days |

The Agency's goal continues to be that the entire administrative dispute resolution process (*i.e.*, informal through formal to a final EPA decision) should not exceed ninety (90) days from when the settling defendants invoke the dispute resolution process. By not extending informal negotiations and limiting the negotiations to the period agreed upon in the settlement, the Region keeps the dispute actively moving toward resolution. Formal negotiations lead to a final administrative decision by EPA.

²³ Compare Model RD/RA Consent Decree, § XIX, ¶76(a) with "Revised Model Administrative Order on Consent for Removal Actions," OSRE, § XVI, ¶¶40-42 (July 9, 2001).

EPA's final administrative decision should include:

- The resolution of the dispute, including a justification of EPA's position;
- The amount of money owed (*e.g.*, principal, interest, penalties), if any;
- The date payment is due, if applicable; and
- A statement that the matter will be considered delinquent and referred to DOJ for collection if not paid by the payment due date provided in the final decision or if not properly appealed (if provided by the terms of the consent decree).

If EPA's final decision requires the settling party to pay all or part of the disputed costs, and the party fails to pay those costs or, where permitted, fails to appeal to a district court, then the Region should refer the debt to DOJ-ENRD for collection within thirty (30) days after the payment due date provided in the final decision. If a party does appeal EPA's decision to the court, then DOJ-ENRD and EPA will coordinate the government's response to the appeal.

D. Collecting Interest on Late Payments

When a payment owed pursuant to a consent decree, AOC or administrative agreement is not timely received, interest begins accruing based on the terms of the settlement. For example, in EPA's Model RD/RA Consent Decree, a party must pay EPA's past response costs within 30 days of the effective date of the decree (*i.e.*, typically the date the decree is entered by the court). If the payment is not made within the 30 day period, interest begins to accrue on the effective date of the agreement. For future response costs, payment is to be made within 30 days of the Settling Defendants' receipt of the bill. If payment is not made within the 30 day period, interest on a late payment begins to accrue on the date of the bill. Interest accrues through the date of payment. *See* Model RD/RA Consent Decree, § XVI, ¶57.

Key Points: Collecting Interest on Late Payments

- The language of the settlement determines when interest accrues on a late payment.
- Where a balance remains because of a late payment, the Region should consider whether to write-off the remaining balance or to immediately contact the party and request payment.

Any interest that accrues from a late payment by a party becomes part of the account receivable, though identified on a separate line. Most likely, a late payment will not include accrued interest. Because EPA's policy is to apply the payment first to interest and second to principal, a small portion of the principal balance may remain unpaid. If a balance remains on an account receivable due to interest accrual from a late payment, then the Region should determine whether to write-off the remaining balance using the procedures of the compromise memo (*See* n. #4) or to immediately contact the party and request payment (stipulated penalties may have also accrued during the period of non-payment). If the remaining balance is not paid when demanded, and the Region determines that collection of the unpaid amount is warranted, it should follow the applicable referral procedures outlined in this guidance. For example, claims arising under consent decrees would be automatically handled by the pertinent USAO while claims arising under administrative agreements or AOCs would be referred to DOJ.

E. Assessing and Collecting Stipulated Penalties

EPA policy requires consent decrees to include a stipulated penalty provision in the decree.²⁴ EPA administrative agreements and AOCs typically contain a stipulated penalty provision as well. Thus, depending on the language of the decree, AOC, or administrative agreement, stipulated penalties may be triggered when the settling party fails to comply with an obligation of a consent decree or administrative agreement, including the failure to pay EPA's response costs. For example, EPA's Model RD/RA Consent Decree and Model Administrative Order on Consent for Removals ("Model AOC for Removals") specifically identify "due dates for payments" as compliance milestones which should be subject to a stipulated penalty.²⁵

Key Points: Assessing and Collecting Stipulated Penalties

- Depending on the language of the settlement, stipulated penalties may be triggered when the settling party fails to pay EPA's response costs.
- The unpaid stipulated penalty is referred to DOJ with the delinquent account receivable that arose from a party's initial nonpayment.

Based on the language of the settlement, stipulated penalties may accrue automatically when a violation occurs. Thus, if a settling party makes a late payment or fails to pay all or part of a future response cost bill, the Regional FMO should check with its legal enforcement office to determine if stipulated penalties were triggered. When EPA assesses penalties and, in coordination with DOJ, issues a subsequent demand for payment of the stipulated penalties, the Regional FMO typically modifies the existing account receivable to include the newly established penalty amount. If a party fails to pay the demand for stipulated penalties within the time provided by the settlement (usually payment is due within thirty (30) days after EPA issues its demand), the Region should refer the delinquent account receivable (which includes the stipulated penalty) to DOJ.

The referral should follow the procedures in this guidance, *e.g.*, administrative sum-certain, date-certain debts of \$1 million or less are referred to the FLU via the NCIF while all other debts are referred to DOJ-ENRD. If the Region believes that a compromise or write-off of the stipulated penalty account receivable may be appropriate, it should refer to the compromise memo for guidance (*see n. 4*).

²⁴ For a discussion on the use of stipulated penalties in consent decrees, *see* "Guidance on the Use of Stipulated Penalties in Hazardous Waste Consent Decrees," OECM, OSWER# 9835.2b (Sept. 21, 1987). *See also* CERCLA Section 121(e)(2). If compromising stipulated penalties, *see* "Revisions to OECA Concurrence and Consultations Requirements for CERCLA Case and Policy Areas," OECA, OSRE, § III(C)(1)(e), at 10, (9/30/98).

²⁵ *See* Section XX, ¶79(b)(1) of the Model RD/RA Consent Decree and Section XVIII, ¶47(b) of the Model AOC for Removals.

F. Delinquent Accounts Receivable Arising under De Minimis Settlements

Regions should refer delinquent accounts receivable arising under Section 122(g) administrative *de minimis* agreements to DOJ for collection. Section 122(g)(4) provides that, “[t]he district court for the district in which the release or threatened release occurs may enforce any such administrative order.” Regions should use the same referral procedure for administrative *de minimis* agreements that is followed for administrative settlements as set forth in Section III(A) & (B)(3) above.²⁶ Thus, a delinquent account receivable should be referred to DOJ-ENRD or the NCIF for collection after a Notice of Non-Compliance letter (*See* appendix D (*de minimis* version)) has been issued and payment has not been made.

When deciding whether to refer the case to DOJ-ENRD or to the NCIF, Regions should consider a *de minimis* party’s financial ability-to-pay (*see* n. 7). In other *de minimis* cases, the Region may decide that enforcement, though possible, is not a viable option because of the limited enforcement value in pursuing the *de minimis* party, *e.g.*, the claim is small, the party is marginally viable, and enforcement of the claim would not likely further the Agency’s enforcement policy.²⁷ Once the Region determines that the party cannot afford to pay its existing obligation or enforcement of the claim is not in the best interest of the Agency, then the Region should refer to the Compromise Memo for guidance on compromising or terminating the debt (*see* n. 4).²⁸

Key Points: Delinquent Accounts Receivable Arising under De Minimis Settlements

- Regions should follow the same referral procedure for *de minimis* administrative agreements that is followed for Section 122(h) sum-certain, date-certain administrative settlements.
- Regions should consider a *de minimis* party’s ability-to-pay (*see* n. 7) and the value of the account receivable when deciding whether to refer the case for enforcement and collection.

IV. Conclusion

Regional FMOs should continue to work closely with their counsel, program and enforcement counterparts to ensure the proper disposition of delinquent Superfund accounts receivable. FMOs should immediately advise the legal and program offices when a receivable becomes delinquent and request that the assigned staff initiate collection/enforcement action to resolve the outstanding debt. If you have any questions about this guidance, please contact Benjamin Lammie of OSRE (202-564-7126) or Vincent Velez of FMD (202-564-4972).

Attachments

²⁶ Delinquent accounts receivable arising from *de minimis* consent decrees should be handled as provided in Section III(B)(1) (*i.e.*, contact the appropriate DOJ office as necessary).

²⁷ In some cases, the Region may want to notify the *de minimis* party in writing that its failure to make the promised payment and to comply with the terms of the *de minimis* agreement renders that agreement null and void. Thus, the *de minimis* party loses any contribution protection, no longer receives EPA’s covenant not to sue, and, where applicable, may be subject to a private contribution lawsuit.

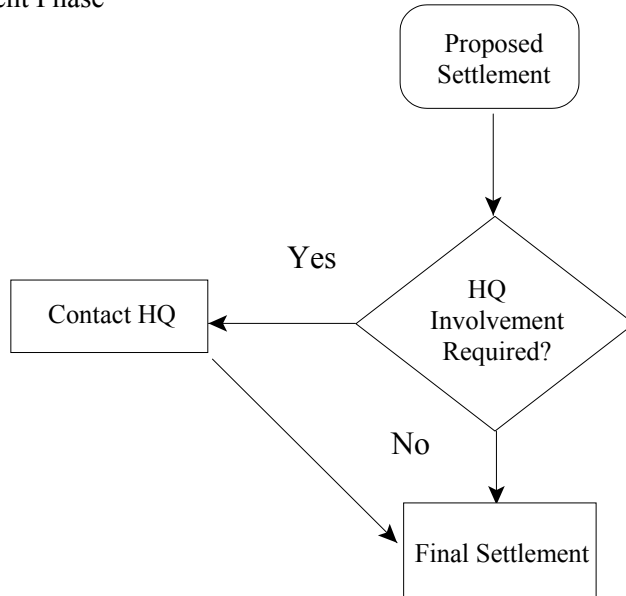
²⁸ For guidance concerning the referral of claims arising under unilateral administrative orders or prospective purchaser agreements, please contact Headquarters.

bcc: Maryann Froehich, OC
Juliette McNeil, FMD
Sandra Connors, RSD
Paul Connor, PPED
William Cooke, FMD
Vince Velez, FMD
Charles Young, FMD
Alan Carpien, OGC
John Rowland, OGC
Charles Openchowski, OGC
Bruce Gelber, DOJ
Maureen Katz, DOJ
Ken Long, DOJ
John Smith, OERR
OSRE Branch Chiefs
RSD Liaisons

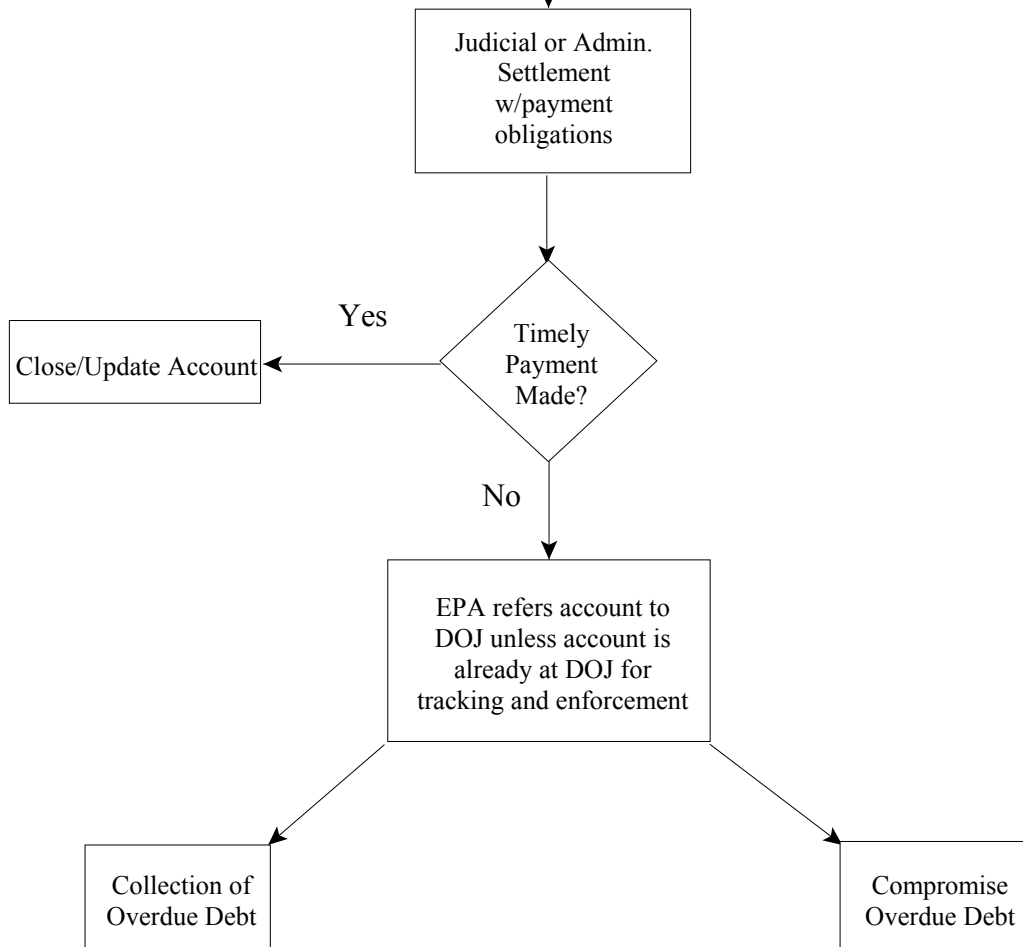
Overview

APPENDIX A

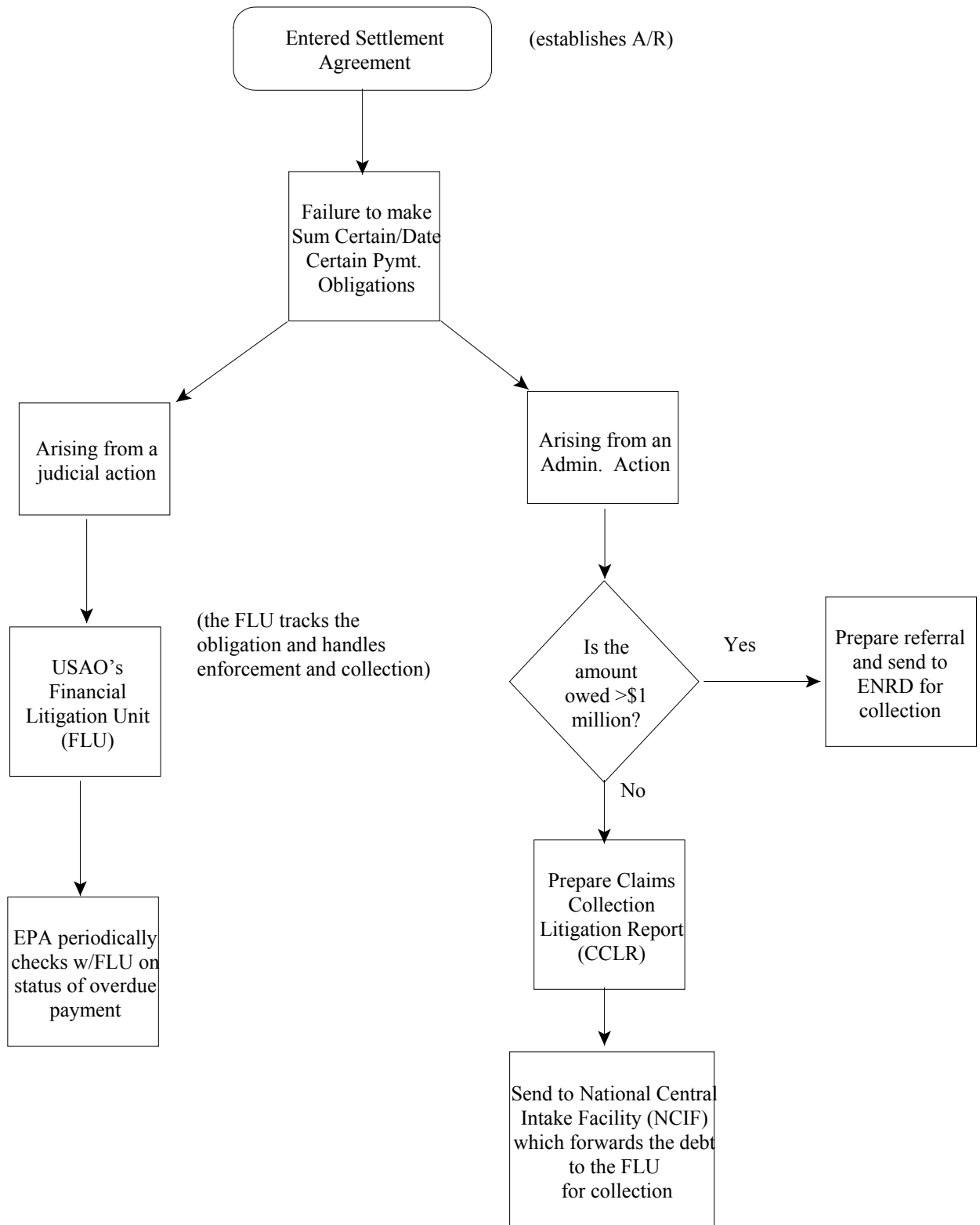
Pre-Settlement Phase



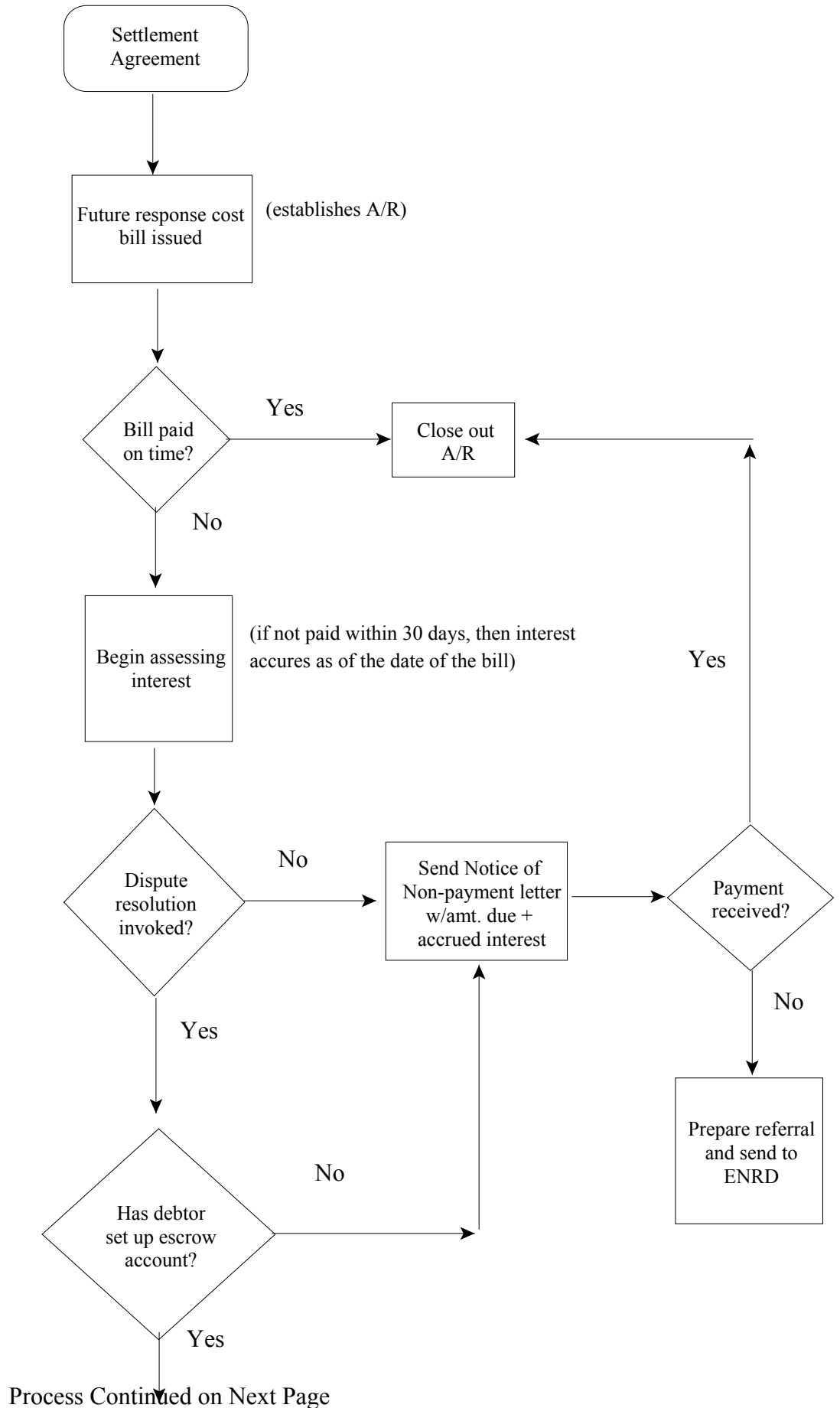
Post-Settlement Phase

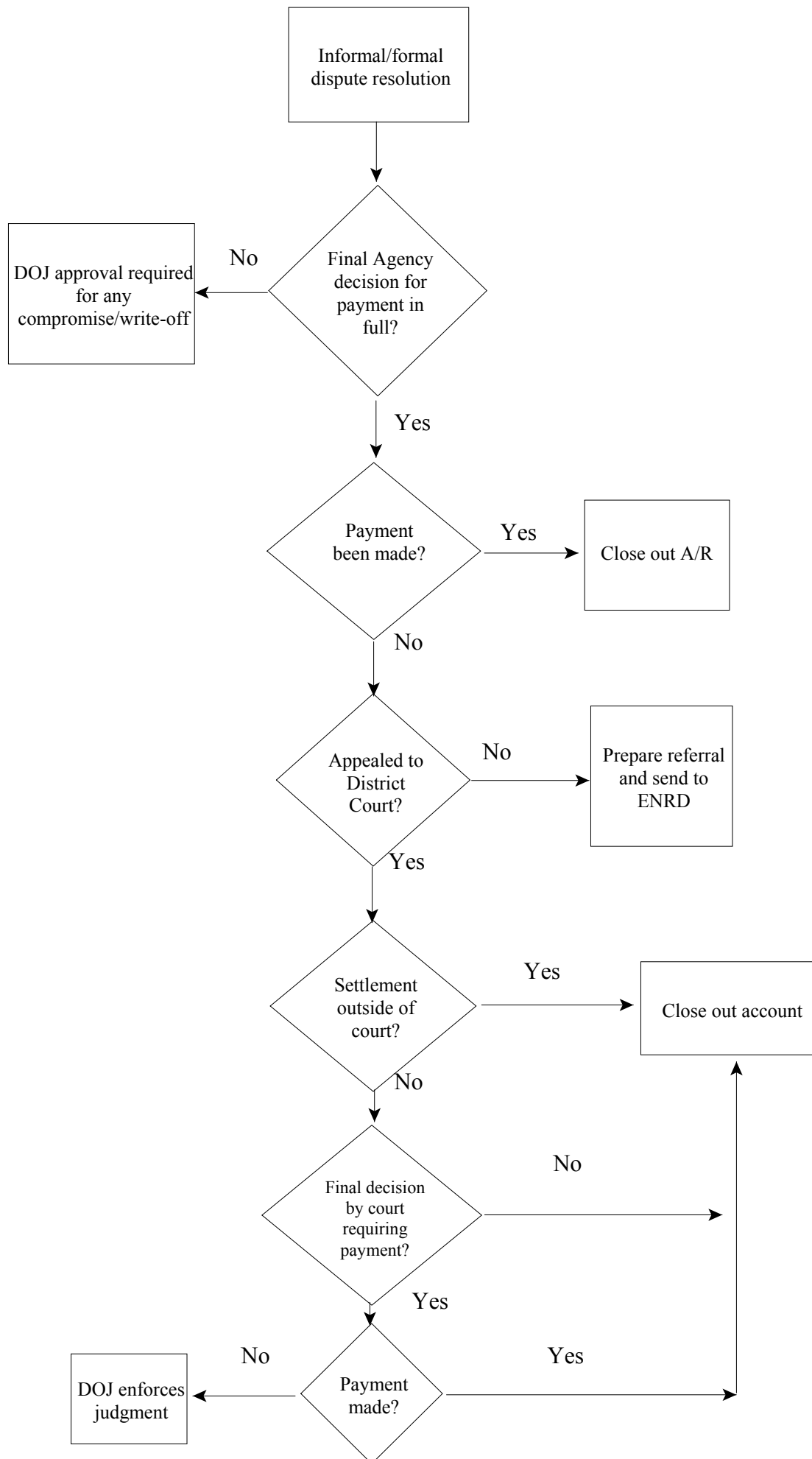


Post-Settlement
Sum Certain/Date Certain Obligations



Post-Settlement
Future Response Cost Obligations





APPENDIX B

CERCLA Collection Guidance - *Quick Reference*

The guidance retains the basic referral and collections procedures from the interim guidance, and addresses additional areas, including: judgments, bankruptcies, interest, and stipulated penalties.

Identify and Process Overdue Accounts Receivable (“ARs”) Quickly

- ▶ DOJ automatically enforces sum-certain/date-certain obligations in judicial agreements or judgments.
- ▶ In most other cases, EPA *issues a Non-Compliance letter within 15 days* of identifying a delinquency and refers the claim to DOJ if not paid within 30 days from the date of the Non-Compliance letter.
- ▶ Conduct monthly monitoring of Superfund ARs.

Sum Certain due on a Date Certain Delinquent ARs

Payments Due under *Judicial Agreements* and Court Ordered Judgments

- ▶ The U.S. Attorney’s Office monitors payment due dates and ensures that appropriate follow up action is taken to collect amounts due.
- ▶ A party has 60 days to appeal a judgment.
- ▶ When necessary, EPA should contact the pertinent Financial Litigation Unit to determine the status of DOJ enforcement actions.

Payments Due from a party in *Bankruptcy Proceedings*

- ▶ Bankruptcy code automatic stay prohibits EPA debt collection activities.
- ▶ Unless EPA’s claim is based on a pre-existing AR, record a memo entry in IFMS when EPA files its proof of claim.
- ▶ Once the court approves a final bankruptcy plan and EPA’s claim is allowed, eliminate the memo entry and record an AR for the amount of the claim in IFMS.
- ▶ Contact DOJ for the status of a bankruptcy case, if needed.

Past Cost Payments due under Section 122 *Administrative Agreements*

- ▶ Where the unpaid principal amount is equal to or **less than \$1 M** (exclusive of interest, costs, or penalties), refer the debt to the National Central Intake Facility (NCIF).
- ▶ Where the unpaid principal amount is **over \$1 M**, refer the debt to DOJ-ENRD.

Future Response Cost Bill Delinquent ARs

- ▶ Delinquent future response cost bills are referred to DOJ-ENRD.
- ▶ A party typically has 30 days after receipt to pay the bill.
- ▶ When a party fails to pay a bill or to timely invoke dispute resolution (DR), EPA issues a Non-Compliance letter that gives the party 14 additional days to pay or to invoke DR.
- ▶ When a party invokes DR, ensure that all appropriate Regional offices are notified and the disputed amount is escrowed.
- ▶ EPA’s goal is to complete disputes over costs within 90 days and refer the dispute to DOJ-ENRD within 30 days after the due date in EPA’s final administrative decision.

Interest: Assessing and Collecting on Late Payments

- ▶ The settlement language determines when interest accrues on a late payment.
- ▶ Where a small balance remains because of a late payment, the Region should consider whether to immediately contact the party and request payment or write-off the remaining balance.

Stipulated Penalties: Assessing and Collecting on Late Payments

- ▶ Depending on the settlement language, stipulated penalties may be triggered when the settling party fails to pay EPA's response costs.
- ▶ The stipulated penalty is referred to DOJ *along with* the delinquent AR arising from the nonpayment of the principal amount.

Delinquent Accounts Receivable Arising under De Minimis Settlements

- ▶ Follow the same referral procedure for *de minimis* agreements that is followed for Section 122 sum-certain/date-certain administrative settlements.
- ▶ Consider a *de minimis* party's ability-to-pay and the enforcement value of the AR when deciding whether to refer the case for enforcement and collection.

SAMPLE
Memorandum of Understanding
for handling Superfund Accounts Receivable
Among the [Regional legal/enforcement, program/cost recovery and finance offices]

Regions have flexibility and discretion in generating a Memorandum of Understanding (MOU) for handling Superfund accounts receivable. The following Sample MOU is only one example of how a Region might wish to facilitate coordination among different Regional offices. It is narrowly tailored. Regions should modify the MOU to fit the Regional organization and responsibilities of each Regional office. Because EPA Regions have different organizational structures, the sample language is left as generic as possible and is not meant to convey how a Region should handle its internal management.

I. Introduction

This Memorandum of Understanding (MOU) is designed to facilitate close and cooperative working relationships among the Regional Offices that handle Superfund accounts receivable. By clearly delineating the roles and responsibilities of the Regional Offices, the MOU should help avoid misunderstandings and allow for more efficient processing of current or delinquent accounts receivable.

II. Purpose

This MOU [and any attachments] provides the [legal, program, financial office (use Regional Office names as determined by Regional organization)] with operating procedures for establishing Superfund accounts receivable and for billing and collecting amounts due.

III. Scope

The MOU is intended to supplement Agency and Regional directives on the Superfund program and its “cost recovery” accounts receivable specifically.¹ This MOU documents the agreed upon procedures and interaction of the signatory Offices/Divisions. This MOU does not affect other relationships among the signatory [Offices/Divisions] as set forth in other Memoranda of Agreement and delegations governing other areas of responsibility, unless otherwise noted herein. [This MOU [amends] [replaces] the previous MOU dated _____].

¹ The Region may wish to define the scope of its MOU more broadly, e.g., to include handling State Superfund Contracts, litigation referrals, and other related topics.

IV. The Types of Superfund Accounts receivable Addressed by this MOU

[Cost Recovery]

[One of the most important objectives of the Superfund Program is to recover the funds that EPA spends in cleaning up a Superfund site. Recovery may be accomplished either through negotiation with the potentially responsible parties (PRPs) associated with the site or as a result of a legal action against the PRPs. PRPs may be required to pay EPA all or only a portion of the costs that EPA incurred at a site. The amount and timing of payments due EPA may be found in documents such as consent decrees or administrative orders. The costs that EPA tries to recover may be past costs, future costs, premium payments (cashouts), oversight costs, or fines and penalties.]

[Fines and Penalties]

[The Superfund law gives EPA the authority to impose and collect fines and penalties from individuals or firms that violate the law or who do not comply with certain types of agreements or orders. EPA policy requires consent decrees to include a stipulated penalty provision in the decree. Administrative agreements and Administrative Orders on Consent (AOC) may also contain a stipulated penalty provision. Thus, depending on the language of the decree, AOC, or administrative agreement, stipulated penalties may be triggered when the settling party fails to comply with an obligation of a consent decree or administrative agreement, including the failure to pay EPA's response costs.]

V. Managing Superfund Accounts receivable – Roles and Responsibilities²

[Regional program/cost recovery office]

The [Regional program/cost recovery office] acts as the principal cost recovery process office, with responsibility for overall coordination of cost recovery activities. Remedial Project Managers (RPMs) and On-Scene Coordinators (OSCs) provide information and documentation of on-site activities for which cost recovery is sought. [The RPMs and OSCs also review bills and participate in case development.] Among the functions of the office are: [List functions of office]

² The name and the specific roles and responsibilities of an individual office in the Regions vary. Regions should tailor this section to its own organizational structure and accounts receivable needs.

[Some examples include: 1) documenting work performed for the site; 2) keeping cost recovery targets on schedule; 3) preparing cost summary reports identifying the total oversight and/or past response costs, future or premium payments to be recovered for each site; 4) issuing demand letters and information requests; 5) assessing ability to pay claims; 6) tracking and reporting cost recovery related activities.]

[Other duties might include preparing and forwarding: a cost summary report, a cover memo containing pertinent billing information, and a copy of the appropriate consent order or decree, to the [Regional financial office] for a bill to be prepared. The [Regional program/cost Recovery office] advises the [Regional financial office] of any changes in the amounts due or payment dates or any other information concerning the accounts receivable. Reviews and submits comments to the [Regional financial office] on the [weekly/bi-weekly/monthly] Superfund Accounts Receivable Report.]

[Regional legal/enforcement office]

The [Regional legal office] is the primary legal advisor for the cost recovery process in EPA Region __. For legal actions creating Superfund debts, [the Regional legal office] will promptly transmit to the [Regional financial office] copies of all final settlement documents, consent decrees, administrative orders, or demand for stipulated penalty letters. The [Regional legal office] will advise the [Regional financial office] of any changes in the amounts due or the payment due dates which result from negotiations or meetings with potentially responsible parties [PRPs]. The [Regional legal office] will notify the [Regional finance and cost recovery/program offices] when dispute resolution is invoked by [the settling party/respondents] as part of an agreement and which results in the delay of payment or penalty assessment. The [Regional legal office] represents EPA Region ____ with respect to any stipulated penalty demands. A copy of EPA's Final Decision regarding an EPA demand for stipulated penalties will be forwarded to the [Regional financial office] to establish an accounts receivable.

[Other duties of the [Regional legal office] might include: 1) reviewing and submitting comments to the [Regional financial office] on the [weekly/bi-weekly/monthly] Superfund Accounts Receivable Report; 2) tracking and reporting cost recovery related activities; 3) assisting with the collection process, including but not limited to reviewing Notice of Non-Compliance letters, preparing accounts receivable collection/enforcement referrals or write-off of accounts receivable requests; 4) reviewing oversight bills; and 5) providing notice of the resolution of bankruptcy claims and Court proceedings.]

[Regional financial office]

The [Regional financial office] is responsible for the administration and management of Superfund accounts receivable. The [Regional financial office] handles the following Superfund cost recovery activities: 1) verifies, records and tracks Superfund accounts receivable in the Integrated Financial Management System (IFMS) when notified of legal debts due the Agency;

2) bills and collects the amounts due; 3) records collections into IFMS and provides copies of collection information to the [Regional cost recovery/program and legal offices]; 4) notifies [Regional cost recovery/program and legal offices] when payments are not received by the due date; 5) calculates and assesses any interest on Superfund accounts receivable, as needed; and 6) prepares a [weekly/bi-weekly] Superfund Accounts Receivable Report.

Upon receipt of a settlement document, the [Regional financial office] determines the appropriate Site Specific account number for the accounts receivable, assigns an accounts receivable log number to the document, records the accounts receivable into IFMS and creates a file containing the settlement document and any related correspondence.

Upon receipt of a cost summary report for oversight charges and/or past response costs/future or premium payments at a site, the [Regional financial office] prepares a cover letter and invoice for the PRP containing the appropriate billing and remittance information. An account receivable log number will be assigned and the accounts receivable will be recorded in IFMS against the appropriate site specific account number. Copies of the letter and bill will be sent to [Regional cost recovery/program and legal offices]. When the collection is received, the funds are invested and the collection recorded in IFMS.

VI. Bi-weekly/Monthly Meetings³

The undersigned [Regional cost recovery/program, legal and financial offices] agree that designated staff from the undersigned offices will meet bimonthly (or monthly) to review the Regional Superfund accounts receivable. The purpose of the meetings is to evaluate the ongoing Superfund accounts receivable process, prioritize the enforcement and collection of overdue accounts receivable and ensure coordination of the Regional activities.

VII. Modification/Amendments

[This MOU can be modified/amended with the written concurrence of the undersigned offices.]

³ The Region may want to designate certain staff members to form an accounts receivable workgroup/team whose job is to keep management apprised of current issues arising in the Region's accounts receivable process. For example, the workgroup/team functions could be integrated into the MOU. The workgroup/team could provide feedback and suggestions for improvement, identify critical process points and areas for follow-up activity, and suggest modifications to the MOU and the Regional cost recovery procedures.

VIII. Approval/Concurrence

We, the undersigned, agree with the purpose and procedures set forth in this Memorandum of Understanding and will ensure that these efforts will be fully supported by our staffs.

[Regional program/cost recovery office]

I concur in the above Memorandum of Understanding for handling Superfund Accounts Receivable.

Date

[Title]

[Regional legal/enforcement office]

I concur in the above Memorandum of Understanding for handling Superfund Accounts Receivable.

Date

[Title]

[Regional financial office]

I concur in the above Memorandum of Understanding for handling Superfund Accounts Receivable.

Date

[Title]

[4. Regional Administrator Concurrence]⁴

⁴ The Region may wish to include the RA's signature.

***Revised* MODEL LETTER**
NOTICE OF NON-COMPLIANCE WITH PAYMENT PROVISION
OF [CONSENT DECREE/SETTLEMENT/AGREEMENT]

Certified Mail - Return Receipt Requested [Date]

[Name], [Title]
 [Address]

RE: [_____ Site ("Site")], [Location]:
 [Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. ____]

Dear [_____]:

[I. For failure to pay a sum certain due on a date certain e.g., past cost payment:]

A. Failure to Make Required Payment

With this letter, EPA is notifying you of [Respondent(s)/Settling Defendant(s)] [insert name(s')] noncompliance with the above-referenced [Administrative Order/Consent Decree/Agreement] for failure to pay [insert dollar amount of overdue payment, e.g., "\$100,000"] by the due date of [date] as required by Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement]. [Paragraph __ states:

If appropriate, quote payment language of [Administrative Order/Consent Decree/Agreement]]

[If appropriate, include discussion of why payment is now overdue based on the above language.]

B. Interest is Accruing on the Unpaid Amount

Interest is accruing on the unpaid amount in accordance with Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement], from [date] at [insert applicable interest rate]. As of the date of this letter, interest has accrued in the amount of \$ _____. [Paragraph __ states:

¹ The Region should tailor this model to the specific circumstances of the case.

If appropriate, quote interest language of [Administrative Order/Consent Decree/Agreement], including obligation to pay, interest rate and definition, if any.]

C. Stipulated Penalties²

In accordance with Section __, Paragraph __ of the [Administrative Order/Consent Decree/Agreement], you may be subject to stipulated penalties which are accruing in the amount of \$__ per day from the day after the payment was due through the date full payment is made. [Paragraph __ states:

If appropriate, quote applicable stipulated penalty language of the [Administrative Order/Consent Decree/ Agreement]

[II. For failure to pay a future response cost bill and properly invoke dispute resolution:]

A. Failure to Pay “Future Response Costs”³ or Properly Invoke Dispute Resolution

With this letter, EPA is notifying you of [Respondent(s)/Settling Defendant(s)][insert name(s)] noncompliance with the above-referenced [Administrative Order/Consent Decree/Agreement] for failure to: (1) pay EPA's Future Response Costs demanded by EPA’s bill dated ____, or (2) properly invoke dispute resolution for some or all of the Future Response Costs demanded, within [insert number] days of [the date of the demand/the date of receipt of the demand], as provided by Section __, Paragraph __ of the [Administrative Order/Consent Decree/Settlement. [As to Future response Costs, paragraph __ states:

If appropriate, quote future response cost payment language (include any relevant dispute resolution language and, if applicable, note escrow requirement) of [Administrative Order/Consent Decree/Agreement]]

Specifically, the [Respondent(s)/Settling Defendant(s)] has/have not paid \$__, nor has/have it/they notified EPA that any disputed amounts have been deposited into an interest-bearing escrow account as required by Paragraph __. You have fourteen (14) days from the date of this Notice to pay the amount due or to properly invoke the dispute resolution provision as required by the [Administrative Order/Consent Decree/Agreement].

² [If the document has no applicable stipulated penalty provision, substitute, “In addition, the [Respondent(s)/Settling Defendant(s)] may be subject to civil penalties from the day after the payment was due through the date that payment is made as a result of their noncompliance.”]

³ To ensure that some costs are not inadvertently excluded, use the specific term in the [Administrative Order/Consent Decree/Agreement]. For example, if “future response costs” is what the settling party agreed to pay, then use that term when referring to the payment and not the term “oversight costs.”

B. Interest is Accruing on the Unpaid Amount

Interest is accruing on the unpaid amount in accordance with Section ___, Paragraph ___ of the [Administrative Order/Consent Decree/Agreement], from [date] at [insert applicable interest rate]. As of the date of this letter, interest has accrued in the amount of \$ _____. [Paragraph ___ states:

If appropriate, quote interest language of [Administrative Order/Consent Decree/Agreement], including obligation to pay, interest rate and definition, if any.]

C. Stipulated Penalties⁴

In accordance with Section ___, Paragraph ___ of the [Administrative Order/Consent Decree/ Agreement], you are subject to stipulated penalties which are accruing in the amount of \$ ___ per day from the day after the payment was due [or required to deposited into an escrow account] through the date full payment is made [or deposited into an escrow account]. [Paragraph ___ states:

If appropriate, quote applicable stipulated penalty language of the [Administrative Order/Consent Decree/ Agreement]]

[For all cases of failure to pay:]

D. Failure to Pay May Result in this Claim Being Referred to the United States Department of Justice for Collection

Payment is due immediately. If payment is not made within fourteen (14) days after the date of this Notice, the payment amount, plus any accrued interest, and penalties, may be referred to the Department of Justice for enforcement and collection. No additional EPA notice will be sent. The referral will also include enforcement costs, including attorneys' fees, as appropriate.

The manner and method of payment is set forth in paragraph ___ of the [Administrative Order/Consent Decree/ Agreement].

[Quote applicable language from the [Administrative Order/Consent Decree/ Agreement]

⁴ [If the document has no applicable stipulated penalty provision, substitute, "In addition, the [Respondent(s)/Settling Defendant(s)] may be subject to civil penalties from the day after the payment was due through the date that payment is made as a result of their noncompliance."]

If you have any questions or wish to discuss this matter, or need to make further arrangements, please contact [name] [telephone number]. Please note, unless otherwise advised in writing by EPA, any communications with EPA will not relieve you of your obligation to make the required timely payment as provided in this letter.

Sincerely,

[Name]

[Title]

[Office]

cc: [Financial Management Officer, U.S. EPA, Region ____]
[Assistant ORC/Legal Enforcement Staff]
[DOJ Assistant Section Chief]
[Cost recovery/Superfund program staff]

**NOTICE OF NON-COMPLIANCE WITH PAYMENT PROVISION
OF *DE MINIMIS* ADMINISTRATIVE AGREEMENT**

Certified Mail - Return Receipt Requested [Date]

[Name], [Title]
[Address]

RE: [_____ Site ("Site")], [Location]:
[CERCLA Section 122(g) De minimis Administrative Agreement, EPA Docket No. ____]

Dear [_____]:

A. Failure to Make Required Payment

With this letter, the U.S. Environmental Protection Agency (EPA) is notifying you that it has not received the payment required by the above-referenced *De minimis* Administrative Agreement. Respondent(s) [insert name(s')] failure to pay [insert dollar amount of overdue payment, e.g., "\$10,000"] by the due date of [insert date] as required in Section __, Paragraph __ is a violation of the *De minimis* Administrative Agreement. [Paragraph __ states:

If appropriate, quote payment language of *De minimis* Administrative Agreement.]

[If appropriate, include discussion of why payment is now overdue based on the above language.]

B. Interest is Accruing on the Unpaid Amount

Interest is accruing on the unpaid amount in accordance with Section __, Paragraph __ of the *De minimis* Administrative Agreement, from [date] at [insert applicable interest rate]. As of the date of this letter, interest has accrued in the amount of \$ _____. [Paragraph __ states:

If appropriate, quote interest language of *De minimis* Administrative Agreement, including obligation to pay interest based on late payment, interest rate and definition, if any.]

¹ The Region should tailor this model to the specific circumstances of the case.

[C.² Failure to Pay May Result in this Claim Being Referred to the United States
Department of Justice for Collection

Payment is due immediately. If payment is not made within thirty (30) days after the date of this Notice, the payment amount, plus any accrued interest, may be referred to the Department of Justice for enforcement and collection. No additional EPA notice will be sent. The litigation referral would also include enforcement costs, including attorneys' fees, as appropriate.

The manner and method of payment is set forth in paragraph __ of the *De minimis* Administrative Agreement.

Quote applicable language from the *De minimis* Administrative Agreement.]

[C. Failure to Pay Will Render the *De Minimis* Administrative Agreement Null and Void

Payment is due immediately. If payment is not made within thirty (30) days after the date of this Notice, the *De minimis* Administrative Agreement will become null and void based on your noncompliance with the terms of the agreement. Failure to resolve your liability by satisfying the payment obligations and complying with the agreement will preclude contribution protection under CERCLA Section 113(f)(2) and as set forth in paragraph __ of the *De minimis* Administrative Agreement and will prevent EPA's covenant not to sue from taking effect as set forth in paragraph __ of the *De minimis* Administrative Agreement. [where applicable, you may wish to add "and may subject you to a private contribution lawsuit" in this paragraph as well]

Quote applicable language from the Administrative Agreement.]

D. Further Arrangements

If you have any questions or wish to discuss this matter, or need to make further payment arrangements due to financial difficulties or other reasons, please contact [name] [address] and [telephone number].

Please note, unless otherwise advised in writing by EPA, any communications with EPA will not relieve you of your obligation to make the required timely payment as provided in this letter.

² Regions should refer delinquent accounts receivable arising under Section 122(g) administrative *de minimis* agreements for collection. In limited cases, it may be appropriate to either compromise a promised payment or to write-off the account receivable because of changed financial circumstances of the *de minimis* party or the limited enforcement value in pursuing the claim.

Sincerely,

[Name]

[Title]

[Office]

cc: [Financial Management Officer, U.S. EPA, Region __]

[Assistant ORC/Legal Enforcement Staff]

[DOJ Assistant Section Chief]

[Cost recovery/Superfund program staff]

**Financial Litigation Unit (“FLU”) Directory
of the
U.S. Department of Justice**

Referrals to the FLUs

As a reminder, where the total principal amount of the claim is \$1,000,000 or less (exclusive of interest, costs, or penalties), the claim should be referred to the appropriate United State Attorney’s Office (generally, this will be the Office for the district where the debtor or debtor’s property is located).

Referrals should not be made, however, directly to the U.S. Attorney’s Office. A referral should be sent to the National Central Intake Facility (NCIF) at the below address:

U.S. Department of Justice
National Central Intake Facility
1110 Bonifant Street, Suite 220
Silver Spring, MD 20910-3358

NCIF will process the referral and forward it on to the appropriate U.S. Attorney’s Office (in some cases it may go to a private attorney retained by the Office) to undertake collection efforts. The NCIF will notify EPA as to where the claim has been referred. For Claims where the principal amount due is over \$1,000,000, EPA should refer the claim to the Environmental and Natural Resources Division of the Department of Justice.

FINANCIAL LITIGATION DIRECTORY



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
FINANCIAL LITIGATION STAFF
WASHINGTON, DC

May 24, 2002

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|-----------------------------------|---|---|---|---|
| AL/MD 02 Condon | Leura Garrett Canary <i>U.S. Attorney **</i> | One Court Square, Suite 201 Montgomery, AL 36104 | <i>FLU Attorneys</i> Patricia Conover | <i>Paralegal Specialist</i> Antrena B. Gardner |
| | COM: 334/223-7280 FAX: 334/223-7560 | COM: 334/223-7280 FAX: 334/223-7418 | <i>System Contact</i> Ralph Hickey 334/223-7280 | <i>Financial Litigation Agent</i> Marsha A. Tunnell Nancy Baker |
| | See FLU's address | | | USAALM TALON |
| AL/ND 01 Koga | Alice H. Martin <i>U.S. Attorney **</i> | Robert S. Vance Building 1801 4th Ave. N. Birmingham, AL 35203-2101 | <i>FLU Attorneys</i> Cindy D. Simmons | <i>Paralegal Specialist</i> Carol L. Alston |
| | COM: 205/244-2001 FAX: 205/244-2181 | COM: 205/244-2141 FAX: 205/244-2184 | <i>System Contact</i> Donna Brown Williford 205/731-1785 | <i>Financial Litigation Agents</i> Kathy Cade Glenda Roberts |
| | See FLU's Address | | | USAALN TALON |
| AL/SD 03 Gardner | David P. York <i>U.S. Attorney **</i> | Riverview Plaza 63 S. Royal Street, Suite 600 Mobile, AL 36602 | <i>FLU Attorneys</i> Eugene A. Seidel | <i>Paralegal Specialist</i> Lisa A. Keith |
| | COM: 251/441-5845 FAX: 251/441-5277 | COM: 251/441-5845 FAX: 251/441-5044 | <i>System Contact</i> Joshua Smith 251/441-5845 | <i>Financial Litigation Agents</i> Carolyn Kennedy Leigh Gwin |
| | See FLU's Address | | | USAALS TALON |
| AK 06 Gardner | Timothy M. Burgess <i>U.S. Attorney **</i> | 222 W. 7th Ave. #9 Rm 253 Anchorage, AK 99513-7567 | <i>FLU Attorney</i> Richard L. Pomeroy | <i>Paralegal Specialists</i> Brenda Birmingham Sean Robinson |
| | COM: 907/271-5071 FAX: 907/271-3224 | COM: 907/271-5071 FAX: 907/271-2344 | <i>System Contact</i> Renee Robinson 907/271-5071 | <i>Financial Litigation Agent</i> Scarlet Smith |
| | See FLU's Address | | | USAAC TALON |
| AZ 08 Koga | Paul Charlton <i>U.S. Attorney **</i> | 405 w. Congress, Suite 4900 Tucson, AZ 85701-5041 | <i>FLU Attorneys</i> Gerald S. Frank James E. Mueller | <i>Sup. Debt Collection Agent</i> Genie Miskell |
| | COM: 602/514-7500 FAX: 602/514-7693 E-MAIL: AAZ01 | COM: 520/620-7300 FAX: 520/620-7149 | <i>System Contact</i> Phuong Bui 602/620-7336 | <i>Financial Litigation Agents</i> Gloria Linsenbach Vicki Potter (DynCorp) Jacque Slade |
| | Two Renaissance Square 40 N. Central Ave. 1200 Phoenix, AZ 85004-4408 | | | USAAC TALON |
| AR/ED 09 Gardner | H.E. (Bud) Cumins, III <i>U.S. Attorney **</i> | 425 W. Capital, Suite 500 Little Rock, AR 72201 | <i>FLU Attorney</i> Stacey E. McCord | <i>Financial Litigation Agent</i> Linda Binz Karen Morgan |
| | COM: 501/324-5342 FAX: 501/324-7199 | P.O. Box 1229 Little Rock, AR 72203 | <i>System Contact</i> Elaine Dawson 501/324-5390 | |
| | See FLU's Address | COM: 501/324-5346 FAX: 501/324-5452 | | USAARE TALON |

FINANCIAL LITIGATION DIRECTORY

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|--|---|---|
| AR/WD 10 | Thomas C. Gean <i>U.S. Attorney **</i> | 6th & Rogers, Room 216 U.S. Post Office & Courthouse Building Ft. Smith, AR 72901 | <i>FLU Attorney</i> David Ferguson | <i>Paralegal Specialist</i> Linda Miller |
| | COM: 479/783-5125 FAX: 479/785-2442 | P.O. Box 1524 Ft. Smith, AR 72902 | <i>System Contact</i> John Debes 479/783-5125 | <i>FLU Back-up</i> Cindy McKinney |
| | See FLU's Address | COM: 479/783-5125 FAX: 479/785-2442 | | |
| | Gardner | | | USAARW TALON |
| CA/CD 12 | Debra W. Yang <i>U.S. Attorney **</i> | 300 N. Los Angeles St. Room Number 7516AA Los Angeles, CA 90012 | <i>FLU Attorney</i> Zoran J. Segina | <i>Paralegal Specialist</i> Pat Burton |
| | COM: 213/894-2434 FAX: 213/894-0141 | COM: 213/894-2470 FAX: 213/894-0478 | <i>System Contact</i> Richard Bernales 213/894-0728 | <i>Financial Litigation Agents</i> Lillian Aranda Wanda Belvin Armida Castaneda Mary Edmond Marilen Iliscupides Lisa Lozano Yvette Quirol Santiago Maninang Leticia Medina |
| | 1200 U.S. Courthouse 312 N. Spring St. Los Angeles, CA 90012 | | | <i>FLU Investigator</i> Robert Grossman Fran Traylor |
| | See FLU's Address | | | USACAC TALON/CLASS |
| CA/ED 97 | John K. Vincent <i>U.S. Attorney</i> | 501 I Street, Suite 10-100 Sacramento, CA 95814-2322 | <i>FLU Attorney</i> Ana Maria Martel | <i>Paralegal Specialist</i> Roland Aganon Tina Baca |
| | COM: 916/554-2700 FAX: 916/554-2900 | COM: 916/554-2726 FAX: 916/554-2900 | <i>System Contact</i> Tracy Remitz 916/554-2794 | <i>Financial Litigation Agents</i> Vangie Dizon Nancy Parr |
| | See FLU's Address | | | USACAE TALON |
| CA/ND 11 | David W. Shapiro <i>U.S. Attorney</i> | 450 Golden Gate Ave. 10th Fl. San Francisco, CA 94102 | <i>FLU Attorney</i> Douglas K. Chang | <i>Paralegal Specialists</i> Deneen Moises (Supervisor) Gwen Roberts |
| | COM: 415/436-7200 FAX: 415/436-7234 | 450 Golden Gate Ave. Box 36055 San Francisco, CA 94102 | <i>System Contact</i> Crystal Ruffin 415/436-6953 | <i>Financial Litigation Agents</i> Marilyn M. Campbell Nancy Chew Lori Hawkingberry Joycelyn Tatum Yvonne Wong |
| | See FLU's Address | COM: 415/436-6970 FAX: 415/436-6748 | | USACAN TALON/CLASS |
| Ybarra | | | | |

FINANCIAL LITIGATION DIRECTORY

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| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|--|---|--|
| CA/SD 98 | Patrick K. O'Toole <i>U.S. Attorney</i> | 880 Front Street Rm. 6293 Fed. Office Building San Diego, CA 92101-8893 | <i>FLU Attorney</i> Robert H. Plaxico Mary C. Lundberg Donald D. Clausen Leah Bussell | <i>Paralegal Specialist</i> Gricelda Covington |
| | COM: 619/557-5610 FAX: 619/557-5782 | | <i>System Contact</i> Kim Phan 619/557-6104 | <i>Financial Litigation Invest.</i> Sonia Herrera Carolee Kness Laura Potts Jantine Stoops |
| | See FLU's Address | COM: 619/557-6180 FAX: 619/557-5401 | | USACAS TALON |
| CO 13 | John W. Suthers <i>U.S. Attorney **</i> | Seventeenth Street Plaza 1225 Seventeenth St., Suite 700 Denver, CO 80294 | <i>FLU Attorney</i> Lisa Christian | <i>Paralegal Supervisor</i> Bob Combs Pat McGee-Wake |
| | COM: 303/844-2081 FAX: 303/844-2308 | | <i>System Contact</i> Tom Zinser 303/454-0241 | <i>Financial Litigation Agents</i> Vincent Crespín Carolyn Dean |
| | See FLU's Address | COM: 303/454-0130 FAX: 303/844-2306 | | USACO TALON |
| CT 14 | John A. Danaher III <i>U.S. Attorney</i> | Connecticut Financial Center 157 Church Street, 23 rd Floor New Haven, CT 06510 | <i>FLU Attorney</i> Christine Sciarrino | <i>Paralegal Specialist</i> E. Joyce Seraphin |
| | COM: 203/821-3700 FAX: 203/773-5376 | | <i>System Contact</i> Barbara Bizer 203/821-3700 | <i>Financial Litigation Agent</i> Rosemary Oren Andrea J. Palmucci |
| | See FLU's Address | COM: 203/821-3700 FAX: 203/773-5392 | | USACT TALON |
| DE 15 | Colm F. Connolly <i>U.S. Attorney **</i> | P.O. Box 2046 Wilmington, DE 19899-2046 | <i>FLU Attorney</i> Paulette Nash | <i>Paralegal Specialist</i> Margie Truman |
| | COM: 302/573-6277 FAX: 302/573-6220 | Chase Manhattan Center 1201 Market St. Suite 1100 Wilmington, DE 19899-2046 | <i>System Contact</i> Tony Anguti 302/573-6277 | |
| | See FLU's Address | COM: 302/573-6277 FAX: 302/573-6428 | | USADE TALON |
| DC 16 | Roscoe C. Howard, Jr. <i>U.S. Attorney **</i> | Judiciary Center Bldg. 555 4th St. N.W., Rm 10-312 Washington, D.C. 20001 | <i>FLU Attorney</i> Fred Haynes | <i>Paralegal Specialist</i> Patricia Gilbert |
| | COM: 202/514-7566 FAX: 202/307-3569 | COM: 202/514-7211 FAX: 202/307-0478 | <i>System Contact</i> Nancy Gonzalez 202/514-7566 | <i>Financial Litigation Agents</i> Zena Cuttino Lavenia L. Greene Carolyn Poston |
| | See FLU's Address | | | USADC TALON/CLASS |

FINANCIAL LITIGATION DIRECTORY

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|--|--|---|
| FL/MD 18 | Paul Ignatius Perez <i>U.S. Attorney **</i> | Park Tower Building, 400 North Tampa St., Rm 3200 Tampa, FL 33602 | <i>FLU Attorney</i> John Moran 813/274-6466 | <i>Paralegal Specialist</i> Janice Ramsey <i>Sup. Debt Collection Agent</i> Cassandra Mitchell |
| | COM: 813/274-6000 FAX: 813/274-6200 | | | <i>Financial Litigation Agents</i> Linda Bealts Paulette Belcher (DynCorp) Linda Best Beverly Hill Traci Lenz Regina J. Polite Virginia Stanton Amberedus Watson DynCorp |
| | See FLU's Address | COM: 813/274-6038 FAX: 813/274-6247 | <i>System Contact</i> Anne Fishkin 813/274-6010 | USAFLM TALON |
| | | | | |
| FL/ND 17 | Thomas F. Kirwin <i>U.S. Attorney</i> | 111 North Adams Street, 4 th Fl Tallahassee, FL 32301 | <i>FLU Attorney</i> Pamela A. Moine Robert D. Stinson | <i>Paralegal Specialist</i> Dorothy Yeager |
| | COM: 850/942-8430 FAX: 850/942-8429 | COM: 850/942-8460 FAX: 850/942-8466 | <i>System Contact</i> Beth McCann 850/942-8430 | <i>Financial Litigation Agents</i> Ivey Sewell Ann Head-Ortega |
| | Clark See FLU's Address | | | USAFLN TALON |
| FL/SD 04 | Guy A. Lewis <i>U.S. Attorney</i> | 99 N.E. 4th St., Suite 300 Miami, FL 33132-2111 | <i>FLU Attorney</i> Grisel Alonso Mary Dooley Elizabeth Stein Karin Wherry | <i>Supervisory Legal Tech</i> Ann Woodruff (9318) Karen Thompson (9312) |
| | COM: 305/961-9000 FAX: 305/530-7087 | COM: 305/961-9376 FAX: 305/530-7195 | <i>System Contact</i> Bob Feinberg 305/961-9221 | <i>Financial Litigation Agent</i> Catrina Bryant Cathy Joseph Magda Del Valle (DynCorp) Brenda Glasford (DynCorp) Carrie Greenia (DynCorp) Rolando Leon Grace Lubin Maryet Moxie-Stinson Colleen Perez Gerald Thompson Sandra Williams |
| | Ramsey See FLU's Address | | | USAFLS TALON/CLASS |
| GA/MD 20 | Frank Maxwell Wood <i>U.S. Attorney **</i> | P.O. Box 1702 Macon, GA 31202-1702 | <i>FLU Attorney</i> Bernard Snell | <i>Paralegal Specialist</i> Becky Sanders |
| | COM: 478/752-3511 FAX: 478/752-3403 | 433 Cherry St. 4th Floor Macon, GA 31202 | <i>System Contact</i> Debra J. Lane 478/752-3511 | <i>Financial Litigation Agent</i> Beverly Farley |
| | See FLU's Address | COM: 478/752-3461 FAX: 478/752-3445 | | USAGAM TALON |

FINANCIAL LITIGATION DIRECTORY

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| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|--------------------------------|---|---|---|---|
| GA/ND 19 Ross | William S. Duffey, Jr. <i>U.S. Attorney **</i> | Richard Russell Bldg 75 Spring St., S.W. Rm 1800 Atlanta, GA 30335-6901 | <i>FLU Attorney</i> Kristin I. Tolvstad 404/581-6302 | <i>Paralegal Specialist</i> Joyce Schnurr |
| | COM: 404/581-6000 FAX: 404/581-6181 | | | <i>Financial Litigation Agents</i> Nancy Hein Ginger Jackson Twila Little Del Rease Smith Vanessa Stenbridge Pat Wells Diane Williams Gayle J. Wilson |
| | See FLU's Address | COM: 404/581-6350 FAX: 404/581-6167 | <i>System Contact</i> Claud M. Thompson 404/331-4201 | USAGAN TALON |
| GA/SD 21 | Richard S. Thompson <i>U.S. Attorney **</i> | P.O. Box 8970 Savannah, GA 31412 | <i>FLU Attorney</i> James L. Coursey, Jr. Ruth H. Young | <i>Paralegal Specialists</i> Diane Tremble Maurene Tapley |
| | COM: 912/652-4422 FAX: 912/652-4388 | 100 Bull St. Savannah, GA 31401 | | |
| | See FLU's Address | COM: 912/652-4422 FAX: 912/652-4991 | <i>System Contact</i> Sherrie Page 912/652-4422 | USAGAS TALON |
| GU 93 Ybarra | Frederick A. Black <i>U.S. Attorney</i> | Sirena Plaza 18 Hernan Cortez, Suite 500 Hagatna, GU 96910 | <i>FLU Attorney</i> Marivic P. David | <i>Paralegal Specialist</i> Marie Chenery |
| | COM: 671/472-7332 FAX: 671/472-7334 | COM: 671/472-7332 Ext. 124 FAX: 671/472-7215 | | <i>Financial Litigation Agent</i> Michelle Perez |
| | See FLU's Address | Answering Machine 671/472-7332 | <i>System Contact</i> Patrick O'Keefe 671/472-7332 ext. 113 | USAGU TALON |
| HI 22 Ybarra | Eward H. Kubo, Jr. <i>U.S. Attorney **</i> | PJJK Fed. Bldg Room 6100 Box 50183 300 Ala Moana Blvd. Honolulu, HI 96850-4978 | <i>FLU Attorney</i> Michael Chun Mark Recktenwald | <i>Paralegal Specialist</i> Lisa S. Yoshimura |
| | COM: 808/541-2850 FAX: 808/541-2958 | COM: 808/541-2850 FAX: 808/541-2958 | | <i>Financial Litigation Agents</i> Erlinda Lowry Barbara Pierce |
| | See FLU's Address | | <i>System Contact</i> Randal Wong 808/541-2850 | USAHI TALON |
| ID 23 | Thomas E. Moss <i>U.S. Attorney **</i> | P.O. Box 32 Boise, ID 83707-0032 | <i>FLU Attorney</i> Amy S. Howe | <i>Paralegal Specialist</i> Rosemary S. Zimbelman |
| | COM: 208/334-1211 FAX: 208/334-9375 | First Interstate Center 877 W. Main, Suite 201 Boise, ID 83702 | | <i>Financial Litigation Agent</i> LaRae Crusier |
| | See FLU's Address | COM: 208/334-1211 FAX: 208/334-9375 | <i>System Contact</i> Laurie Porter 208/334-1211 | USAID TALON |

FINANCIAL LITIGATION DIRECTORY

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|----------------------------|---|---|--|---|
| IL/CD 26 | Jan Paul Miller <i>U.S. Attorney **</i> | Paul Findley Fed. Bldg. 600 E. Monroe St., Rm 312 Springfield, IL 62701 | <u>FLU Attorney</u> Beth Collins James A. Lewis | <u>Paralegal Specialist</u> Mary Ann Blair |
| | COM: 217/492-4450 FAX: 217/492-4512 | | <u>System Contact</u> Ed Leonard 217/492-4450 | <u>Financial Litigation Agent</u> Ann O. Johnson |
| | See FLU's Address | COM: 217/492-4450 FAX: 217/492-4767 | | USAILC TALON |
| IL/ND 24 | Patrick J. Fitzgerald <i>U.S. Attorney **</i> | Everett McKinley Dirksen Bldg, Room 500 S 219 S. Dearborn St. Chicago, IL 60604-1702 | <u>FLU Attorney</u> Michele Schroeder | <u>Paralegal Specialist</u> Felice Shinneman <u>Lead Fin. Lit Agent</u> Grace Wingfield |
| | COM: 312/353-5300 FAX: 312/353-2067 | | <u>System Contact</u> Ray Dertz 312/353-8282 | <u>Financial Litigation Agents</u> Linda Allen Aurea Adriano Ken Giles Clay Gogins Desiree Mitchell Maxine Washington |
| | See FLU's Address | COM: 312/353-5446 FAX: 312/886-3501 | | USAILN TALON/CLASS |
| Ybarra | | | | |
| IL/SD 25 | Robert J. Cleary <i>U.S. Attorney</i> | 9 Executive Drive, Suite 300 Fairview Heights, IL 62208 | <u>FLU Attorney</u> Gerald M. Burke | <u>Paralegal Specialist</u> Velve I. Stewart |
| | COM: 618/628-3700 FAX: 618/628-3720 | COM: 618/628-3700 FAX: 618/622-3811 | <u>System Contact</u> Jim Agnes 618/628-3700 | <u>Financial Litigation Agent</u> Tammy McMannis Mary Weber |
| | See FLU's Address | | | USAILS TALON |
| IN/ND 27 | Joseph S. Van Bokkelen <i>U.S. Attorney **</i> | 5400 Federal Plaza, Suite 1500 Hammond, IN 46320 | <u>FLU Attorney</u> Carol A. Davilo | <u>Paralegal Specialists</u> Peggy Palmer |
| | COM: 219/937-5500 FAX: 219/852-2770 | | <u>System Contact</u> Cynthia A. Gant 219/322-8576 | <u>Financial Litigation Agent</u> Doris Conway Anita Hoover |
| | See FLU's Address | COM: 219/937-5500 FAX: 219/852-2770 | | USAINN TALON |
| Ross | | | | |
| IN/SD 28 | Susan W. Brooks <i>U.S. Attorney **</i> | 10 W. Market St., Suite 2100 Indianapolis, IN 46204-3048 | <u>FLU Attorney</u> Jill E. Zengler | <u>Paralegal Specialist</u> Sue Ross Linda VanHorn |
| | COM: 317/226-6333 FAX: 317/226-6125 | COM: 317/226-6333 FAX: 317/226-6133 | <u>System Contact</u> Robert Masoni 317/226-6333 | <u>Financial Litigation Agent</u> Tracy Jones Michelle Frydell |
| | See FLU's Address | | | USAINS TALON |
| Gardner | | | | |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------------|---|--|---|--|
| IA/ND 29 Koga | Charles W. Larson, Sr. <i>U.S. Attorney **</i> | P.O. Box 74950 Cedar Rapids, IA 52407-4950 | <i>FLU Attorney</i> Kandice Wilcox | <i>Paralegal Specialist</i> Debra Clark |
| | COM: 319/363-6333 FAX: 319/363-1990 | Hach Building, Suite 400 401 First Street, SE Cedar Rapids, IA 52401-1825 | <i>System Contact</i> Sharon Reid 319/363-6333 | <i>Financial Litigation Agent</i> Jean Gregory |
| | See FLU's Address | COM: 319/363-6333 FAX: 319/363-6110 | | USAIAN TALON |
| IA/SD 30 Koga | Steven M. Colloton <i>U.S. Attorney **</i> | U.S. Courthouse Annex, 2nd Fl. 110 E. Court Avenue Des Moines, IA 50309-2043 | <i>FLU Attorney</i> Gary L. Hayward | <i>Financial Litigation Agents</i> Rose Ostrand |
| | COM: 515/284-6257 FAX: 515/284-6288 | COM: 515/284-6485 FAX: 515/284-6492 | <i>System Contact</i> Fred Hanna 515/284-6495 | |
| | See FLU's Address | | | USAIAS TALON |
| KS 31 Koga | Eric F. Melgren <i>U.S. Attorney **</i> | 444 Quincy St., Room 290 Topeka, KS 66683-3592 | <i>FLU Attorney</i> Tanya Sue Wilson | <i>Financial Litigation Agents</i> Carol Campbell Ellen Clark Cathy Jepson Karen Stevens |
| | COM: 316/269-6481 FAX: 316/269-6484 | COM: 785/295-2850 FAX: 785/295-2658 | <i>System Contact</i> Mary Woo 316/269-6481 | |
| | 1200 Epic Center 301 N. Main Wichita, KS 67202-4812 | | | USAKS TALON |
| KY/ED 32 Ramsey | Gregory F. Van Tatenhove <i>U.S. Attorney **</i> | 110 West Vine St., Suite 400 Lexington, KY 40507-1671 | <i>FLU Attorney</i> H. Davis Sledd | <i>Paralegal Specialist</i> Lynne Woodrum |
| | COM: 859/233-2661 FAX: 859/233-2666 | COM: 859/233-2661 FAX: 859/233-2533 | <i>System Contact</i> Robin Gosper 859/233-2661 | <i>Financial Litigation Agent</i> P.J. Guthrie |
| | See FLU's Address | | | USAKYE TALON |
| KY/WD 33 Ramsey | Stephen B. Pence <i>U.S. Attorney **</i> | Bank of Louisville Bldg. 510 W. Broadway 10th Fl. Louisville, KY 40202 | <i>FLU Attorneys</i> Candace Hill Andrea Fried Neichter | <i>Financial Litigation Agents</i> Debbie Beld Kim Breit Wendy Parel |
| | COM: 502/582-5911 FAX: 502/582-5097 | COM: 502/582-5911 FAX: 502/625-7110 | <i>System Contact</i> Carol Uebelhoer 502/582-5911 | |
| | See FLU's Address | | | USAKYW TALON |
| LA/ED 34 Clark | James Letten <i>U.S. Attorney</i> | Hale Boggs Federal Building 501 Magazine St. Room 210 New Orleans, LA 70130 | <i>FLU Attorney</i> Eneid A. Francis Civil Chief | <i>Paralegal Specialist</i> Joan Holub |
| | COM: 504/680-3000 FAX: 504/589-3594 | COM: 504/680-3101 FAX: 504/589-3602 | <i>System Contact</i> Peter Bayer | <i>Financial Litigation Agent</i> Rosanne Alford Annelisa Jackson Alice Jefferson |
| | See FLU's Address | | | USALAE TALON |

FINANCIAL LITIGATION DIRECTORY

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|-----------------------------------|--|--|--|---|
| LA/MD 95 Gardner | David R. Dugas U.S. Attorney ** | Russell B. Long Federal Bldg. 777 Florida St., Suite 208 Baton Rouge, LA 70801 | <u>FLU Attorney</u> James L. Nelson | <u>Paralegal Specialist</u> Nancy Bergeron |
| | COM: 225/389-0443 FAX: 225/389-0561 | | <u>System Contact</u> Darryl Blink 225/389-0443 | <u>Financial Litigation Agent</u> Rosalie Insprucker |
| | See FLU's Address | COM: 225/389-0443 FAX: 225/389-0685 | | USALAM TALON |
| LA/WD 35 Ramsey | Donald W. Washington U.S. Attorney ** | 300 Fannin Street, Suite 3201 Shreveport, LA 71101-3068 | <u>FLU Attorney</u> John A. Broadwell | <u>Paralegal Specialist</u> Vickie Eaves |
| | COM: 318/676-3600 FAX: 318/676-3641 | | <u>System Contact</u> Karen B. Levo 318/676-3619 | <u>Financial Litigation Agents</u> Colleen Gilliam Sheila Still |
| | See FLU's Address | | | USALAW TALON |
| ME 36 Ross | Paula Silsby U.S. Attorney | East Tower, 6th Floor 100 Middle Street Plaza Portland, ME 04101 | <u>FLU Attorney</u> Frederick C. Emery | <u>Paralegal Specialist</u> Lucy Howland |
| | COM: 207/780-3257 FAX: 207/780-3304 | | <u>System Contact</u> Tony McGarrell 207/780-3257 | |
| | See FLU's Address | COM: 207/780-3293 Ext. 3226 FAX: 207/780-3304 | | USAME TALON |
| MD 37 Connors | Thomas M. Dibiagio U.S. Attorney ** | U.S. Courthouse 101 W. Lombard St. Suite 6625 Baltimore, MD 21201-2692 | <u>FLU Attorney</u> Tamera L Fine | <u>Sup.Paralegal Specialist</u> Angela K. Meadows |
| | COM: 410/209-4800 FAX: 410/962-3091 | | <u>System Contact</u> Doug Lohr 410/209-4932/4800 Patricia Smith 410/209-4938/4800 | <u>Financial Litigation Agents</u> Clarice George Caroline Guth Carmelita Henson Wanda Shimer |
| | See FLU's Address | COM: 410/209-4800 FAX: 410/962-2310 | | USAMD TALON |
| MA 38 Connors | Michael J. Sullivan U.S. Attorney ** | One Courthouse Way U.S. Courthouse, Suite 9200 Boston, MA 02210 | <u>FLU Attorney</u> Christopher Alberto | |
| | COM: 617/748-3100 FAX: 617/748-3352 | | <u>System Contact</u> Beth Miltner 617/223-9454 | <u>Financial Litigation Agents</u> Joanne Albano Anita Kiley Lori Ward |
| | See FLU's Address | COM: 617/748-3306 FAX: 617/748-3972 | | USAMA TALON |
| MI/ED 39 Ross | Jeffery G. Collins U.S. Attorney ** | 211 W. Fort Street, Suite 2001 Detroit, MI 48226-3211 | <u>FLU Attorney</u> Ellen Christensen Jacqueline M. Hotz | <u>Paralegal Specialist</u> Judith Cieslak Patricia Barnard |
| | COM: 313/226-9100 FAX: 313/226-4609 | | <u>System Contact</u> Danette Scagnetti 313/226-7163 | <u>Financial Litigation Agents</u> Elizabeth Becker Cynthia Lehnis Karen Stachow |
| | See FLU's Address | | | USAMIE TALON/CLASS |
| MI/WD 40 | Margaret M. Chiara U.S. Attorney ** | P.O. Box 208 Grand Rapids, MI 49501-0208 | <u>FLU Attorney</u> W. Francesca Ferguson | <u>Financial Litigation Agents</u> Maya Blade Lois Hecker |

Michael L. Shiparski

Cheryl Stoll

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|---|--|---|--|
| | COM: 616/456-2404 FAX: 616/456-2408 | The Law Building 330 Ionia Ave., N.W., St. 501 Grand Rapids, MI 49503 | | |
| | See FLU's Address | COM: 616/456-2404 FAX: 616/456-2510 | <u>System Contact</u> Roger Hensley 616/456-2404 | USAMIW TALON |
| MN 41 | Thomas B. Heffelfinger <i>U.S. Attorney **</i> | 600 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415 | <u>FLU Attorney</u> Mary Trippler 612/664-5630 | <u>Paralegal Specialist</u> Cindy Loken |
| | COM: 612/664-5600 FAX: 612/664-5787 | | | <u>Financial Litigation Agents</u> Nancy Nordeen Linda Mike Patti Perpich Anita Uteg |
| Clark | See FLU's Address | COM: 612/664-5637 FAX: 612/664-5783 | <u>System Contact</u> Dan McConville 612/664-5667 | USAMN TALON |
| MS/ND 42 | Jim M. Greenlee <i>U.S. Attorney **</i> | 900 Jefferson Avenue Oxford, MS 38655-3608 | <u>FLU Attorney</u> Ralph M. Dean | <u>Paralegal Specialist</u> Karen B. Tidwell |
| | COM: 662/234-3351 FAX: 662/234-4818 | COM: 662/234-3351 FAX: 662/234-3318 | <u>System Contact</u> Faye Self 662/234-3351 | <u>Financial Litigation Agent</u> Donna P. Bynum |
| Gardner | See FLU's Address | | | USAMSN TALON |
| MS/SD 43 | Dunn O. Lampton <i>U.S. Attorney **</i> | One Jackson Place 188 E. Capitol St., Rm 500 Jackson, MS 39201 | <u>FLU Attorney</u> Pshon Barrett | <u>Paralegal Specialist</u> Lisa Bullock |
| | COM: 601/965-4480 FAX: 601/965-4409 | | <u>System Contact</u> Johnnie Thornton 601/965-4480 | <u>Financial Litigation Agent</u> Linda Bishop Gwendolyn McGee |
| Gardner | See FLU's Address | COM: 601/965-4480 FAX: 601/965-5042 | | USAMSS TALON |
| MO/ED 44 | Raymond W. Gruender <i>U.S. Attorney **</i> | Thomas F. Eaglet on U.S. Courthouse 111 S. 10 th Street, Rm 20.333 St. Louis, MO 63102 | <u>FLU Attorneys</u> Deborah L. Golemon | <u>Paralegal Specialist</u> Lynne Duren |
| | COM: 314/539-2200 FAX: 314/539-2309 | | | <u>Financial Litigation Agents</u> Cheryl Bach Mary Feltmann Karen Wilke |
| | See FLU's Address | COM: 314/539-2200 FAX: 314/539-2309 | <u>System Contact</u> Mark C. Corkery 314/539-2200 | USAMOE TALON |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|--|--|---|
| MO/WD 45 | Todd P. Graves <i>U.S. Attorney **</i> | Charles Evans Whittaker Courthouse 400 E. 9 th Street, 5 th Floor Kansas City, MO 64106 | <i>FLU Attorney</i> David DeTar Newbert | <i>Sup. Paralegal Specialist</i> Mary Covington |
| | COM: 816/426-3122 FAX: 816/426-5186 | COM: 816/426-7166 FAX: 816/426-2569 | <i>System Contact</i> William Waldram 816/426-3122 | <i>Paralegal Specialists</i> Valerie Abernathy Colleen Cook Debra Paschal |
| | See FLU's Address | | | USAMOW TALON |
| MT 46 | William W. Mercer <i>U.S. Attorney **</i> | P.O. Box 1478 Billings, MT 59101 | <i>FLU Attorney</i> Victoria L. Francis | <i>Paralegal Specialists</i> Lisa Gustin Ann Tyler |
| | COM: 406/657-6101 FAX: 406/657-6989 | Western Federal Savings and Loan Bldg., Suite 400 2929 3rd Ave., North Billings, MT 59101 | | |
| | See FLU's Address | COM: 406/657-6101 FAX: 406/657-6058 | <i>System Contact</i> Jason Ferree 406/657-6101 | USAMT TALON |
| NE 47 | Michael G. Heavican <i>U.S. Attorney **</i> | 1620 Dodge Street, Suite 1400 Omaha, NE 68102-1506 | <i>FLU Attorney</i> Laurie Barrett | <i>Paralegal Specialists</i> Judy Kinney 661-3740 Karla Moraine 661-3742 |
| | COM: 402/661-3700 FAX: 402/661-3081 | COM: 402/661-3700 FAX: 402/661-3081 | <i>System Contact</i> Jason Bray 402/221-4774 | |
| | Koga See FLU's Address | | | USANE TALON |
| NV 48 | Daniel G. Bogden <i>U.S. Attorney **</i> | 333 Las Vegas Blvd S, Su 5000 Las Vegas, NV 89101 | <i>FLU Attorney</i> Carlos A. Gonzalez | <i>Paralegal Specialist</i> Robin Cornwell |
| | COM: 702/388-6336 FAX: 702/388-6787 | COM: 702/388-6336 FAX: 702/388-6803 | | <i>Financial Litigation Agents</i> Kim Bush Darlene Ruckard |
| | Ross See FLU's Address | | <i>System Contact</i> Bert Labrador 702/388-6210 | USANV TALON |
| NH 49 | Thomas P. Colantuono <i>U.S. Attorney **</i> | 55 Pleasant St., Rm 352 Concord, NH 03301 | <i>FLU Attorney</i> David L. Broderick | <i>Paralegal</i> Joan Hederman |
| | COM: 603/225-1552 FAX: 603/225-1470 | COM: 603/225-1552 FAX: 603/225-1470 | | |
| | Ross See FLU's Address | | <i>System Contact</i> Edward Carey 603/225-1552 | USANH TALON |
| NJ 50 | Christopher J. Christie <i>U.S. Attorney **</i> | Federal Building, Rm 502 970 Broad St. Newark, NJ 07102-2506 | <i>FLU Attorney</i> Susan J. Steele | <i>Paralegal Specialists</i> Kathy Connors Dianne Cohen |
| | COM: 973/645-2700 FAX: 973/645-2702 | | | <i>Financial Litigation Agents</i> Theresa Beasley Robin Brown Cassandra Covin Jeannine Keenan Devetha McDougall Patricia McFarland |
| | Ybarra See FLU's Address | COM: 973/645-2911 FAX: 973/645-3210 | <i>System Contact</i> Heather Lewis 973/645-2700 | USANJ TALON |

FINANCIAL LITIGATION DIRECTORY

May 24, 2002 13

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------------|--|---|--|--|
| NM 51 Koga | David C. Iglesias <i>U.S. Attorney **</i> | P.O. Box 607 Albuquerque, NM 87103 | <i>FLU Attorney</i> Manuel Lucero 505/224-1467 | <i>Paralegal Specialist</i> Lois Agnes |
| | COM: 505/346-7274 FAX: 505/346-7296 | 201 3 rd St., N.W. Suite 900 Albuquerque, NM 87102 | | |
| | | COM: 505/224-1413/1457 FAX: 505/346-6884 | <i>System Contact</i> Theresa Moore 505/346-7274 | |
| | See FLU's Address | | | USANM TALON |
| NY/ED 53 Condon | Alan Vinegrad <i>U.S. Attorney</i> | 147 Pierrepont Plaza 16th Floor Brooklyn, NY 11201 | <i>FLU Attorney</i> Thomas A. McFarland 718/254-6004 Beth Schwartz 718/254-6017 James Knapp 718/254-6047 Mary Dickman 718/254-6022 | <i>Paralegal Supervisor</i> Brenda Hinkson |
| | COM: 718/254-7000 FAX: 718/254-6479 | | | <i>Financial Litigation Agents</i> Cheryl Baxter Celenia Escalante Donna M. Lynch Ray F. Paz Daisy Roman Roselyn Smith Shauna Sawyer |
| | | COM: 718/254-6080 FAX: 718/254-7482 | <i>System Contact</i> Anthony M. DiSanto 718/254-6466 | |
| | See FLU's Address | | | USANYE TALON/CLASS |
| NY/ND 52 Ross | Joseph A. Pavone <i>U.S. Attorney</i> | P.O. Box 7198 100 South Clinton St. Syracuse, NY 13261-7198 | <i>FLU Attorney</i> William H. Pease | <i>Sup. Paralegal Specialist</i> Beverly Parody |
| | COM: 315/448-0672 FAX: 315/448-0698 | | | <i>Paralegal Specialists</i> Helen Atkinson Paul Condon Jane Sylvester |
| | | COM: 315/448-0672 FAX: 315/448-0646 | <i>System Contact</i> William Eckert 315/448-0672 | <i>Financial Litigation Agent</i> Cheryl Jachym |
| | See FLU's Address | | | USANYN TALON/CLASS |
| NY/SD 54 Condon | James B. Comey <i>U.S. Attorney **</i> | 1 St. Andrews Plaza, 2 nd Floor New York, NY 10007 | <i>FLU Attorneys</i> Kathleen Zebrowski | <i>Paralegal Specialists</i> Mary Johnson-Mickel (Sup) Madelaine B. Coleman-Nagle Gina March-Hudson |
| | COM: 212/637-2573 FAX: 212/791-9098 | COM: 718/422-1848 FAX: 718/422-1708 | <i>System Contact</i> Peter Pascarelli 212/637-2300 Louis W. Jankowski | <i>Financial Litigation Agents</i> Herman Amos, Jr. Audley E. Baptiste Janis Daley Connie Jones Marsha Fils-Aime Carlos E. Ortiz Kathy Taylor |
| | One St. Andrews Plaza New York, NY 10007 | | | |
| | See FLU's Address | | | USANYS TALON |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|-----------------------------------|--|---|---|--|
| NY/WD 55 Condon | Michael A. Battle <i>U.S. Attorney **</i> | Federal Center 138 Delaware Ave. Buffalo, NY 14202 | <u>FLU Attorney</u> Gail Y. Mitchell 716/551-4811 Ext. 833 | <u>Paralegal Specialists</u> Peter R. Galenda Alberta Greco Denise J. Wray |
| | COM: 716/843-5700 FAX: 716/551-3052 | | <u>System Contact</u> Gail E. Barry 716/551-4811 Ext 815 | |
| | See FLU's Address | COM: 716/843-5700 FAX: 716/551-5563 | | USANYW TALON |
| NC/ED 56 Connors | Frank D. Whitney <i>U.S. Attorney **</i> | Federal Building, Suite 800 310 New Bern Avenue Raleigh, NC 27601-1461 | <u>FLU Attorney</u> Barbara D. Kocher | <u>Paralegal Specialist</u> Sarah Aman |
| | COM: 919/856-4530 FAX: 919/856-4487 | | <u>System Contact</u> Joe Stutler 919/856-4530 | <u>Financial Litigation Agents</u> Claire Farland Charlene Harris Catherine Holmes Jeremy Morgan |
| | See FLU's Address | COM: 919/856-4530 FAX: 919/856-4821 | | USANCE TALON |
| NC/MD 57 | Anna Mills S. Wagoner <i>U.S. Attorney **</i> | P.O. Box 1858 Greensboro, NC 27402-1858 | <u>FLU Attorney</u> John W. Stone, Jr. Gill P. Beck | <u>Paralegal Specialist</u> Joan Binkley |
| | COM: 336/333-5351 FAX: 336/333-5561 | 101 S. Edgeworth St., 4th Fl Greensboro, NC 27402 | <u>System Contact</u> Cindy Brooks 336/333-5351 | <u>Financial Litigation Agents</u> Jan R. Collins Monica Jones Carole Smith |
| | See FLU's Address | COM: 336/333-5351 FAX: 336/333-5257 | | USANCM TALON |
| NC/WD 58 | Robert J. Conrad Jr. <i>U.S. Attorney **</i> | Suite 1700 Carillon Building 227 West Trade Street Charlotte, NC 28202 | <u>FLU Attorney</u> Karen E. Eady | <u>Financial Litigation Agents</u> Patti Gard Ashley Dressler Lorin McAllister (DynCorp) |
| | COM: 704/344-6222 FAX: 704/344-6629 | | <u>System Contact</u> Rick W. Sumrall | |
| | See FLU's Address | COM: 704/344-6222 FAX: 704/344-6869 | | USANCW TALON |
| ND 59 Koga | Drew H. Wrigley <i>U.S. Attorney **</i> | Quentin N. Burdick 655 First Ave., N., Suite 250 Fargo, ND 58102-4932 | <u>FLU Attorney</u> Shon Hastings | <u>Paralegal Specialist</u> Linda Webb |
| | COM: 701/297-7400 FAX: 701/297-7405 | | <u>System Contact</u> Kim Kuehl 701/239-5671 | <u>Financial Litigation Agent</u> Sandra Woodward |
| | See FLU's Address | COM: 701/297-7420 FAX: 701/297-7405 | | USAND TALON |
| NMI 05 | SEE GUAM | | | |
| OH/ND 60 Gardner | Emily M. Sweeney <i>U.S. Attorney **</i> | 1800 Bank One Center 600 Superior Avenue, East Cleveland, OH 44114-2600 | <u>FLU Attorney</u> Richard French | <u>Paralegal Specialist</u> Patricia A. Gober |
| | COM: 216/622-3600 FAX: 216/522-3370 | | <u>System Contact</u> Gaynelle Coleman 216/622-3900 | <u>Financial Litigation Agents</u> Sharmen M. Lett Sharon E. McLeod Kathleen Watkins |
| | See FLU's Address | COM: 216/622-3699 FAX: 216/522-4542 | | USAOHN TALON |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|---------------------------------------|--|---|--|--|
| OH/SD 61 Clark | Gregory G. Lockhart <i>U.S. Attorney **</i> | Two Nationwide Plaza 280 N. High St., 4th Floor Columbus, OH 43215 | <i>FLU Attorney</i> Deborah Sanders | <i>Paralegal Specialist</i> |
| | COM: 614/469-5715 FAX: 614/469-2200 | | | <i>Financial Litigation Agent</i> Cloteal Turner Betti Vance |
| | See FLU's Address | COM: 614/469-5715 FAX: 614/469-5240 | <i>System Contact</i> Diane Heintzelman 614/469-5715 | USAOHS TALON |
| | | | | |
| OK/ED 63 Gardner | Sheldon J. Sperling <i>U.S. Attorney **</i> | 1200 W. Okmulgee Muskogee, OK 74401 | <i>FLU Attorney</i> Cheryl Triplett 918/684-5111 | <i>Paralegal Specialist</i> Trina Waltman |
| | COM: 918/684-5100 FAX: 918/684-5130 | COM: 918/684-5115 FAX: 918/684-5130 | | |
| | See FLU's Address | | <i>System Contact</i> Darin Wood 918/684-5100 | USAOKE TALON |
| | | | | |
| OK/ND 62 Gardner | David E. O'Meilia <i>U.S. Attorney **</i> | 333 West 4 th Street, Suite 3460 Tulsa, OK 74103-3809 | <i>FLU Attorney</i> Phil Pinnell | <i>Paralegal Specialist</i> Libbi Felty |
| | COM: 918/581-7463 FAX: 918/581-7769 | COM: 918/581-7463 FAX: 918/581-7675 | <i>System Contact</i> Becky Farmer 918/581-7463 | <i>Financial Litigation Agent</i> Ann L. Hankins Tiffany N. Harper Debra Overstreet |
| | See FLU's Address | | | USAOKN TALON |
| | | | | |
| OK/WD 64 Ramsey | Robert G. McCampbell <i>U.S. Attorney **</i> | 210 West Park Ave., Suite 400 Oklahoma City, OK 73102 | <i>FLU Attorney</i> Ron Pyle Kay Sewell | <i>Paralegal Specialist</i> Joe Higginbotham |
| | COM: 405/553-8700 FAX: 405/553-8888 | COM: 405/553-8700 FAX: 405/553-8885 | | <i>Financial Litigation Agents</i> Denise Gibson Janet Holliday Eileen Ogilvie |
| | See FLU's Address | | <i>System Contact</i> Terry Parsons 405/553-8700 | USAOKW TALON |
| | | | | |
| OR 65 Clark | Michael W. Mosman <i>U.S. Attorney **</i> | Mark O. Hatfield U.S. Courthouse 1000 SW Third Ave., Ste 600 Portland, OR 97204-2902 | <i>FLU Attorneys</i> Robert D. Nesler 503/727-1069 | <i>Paralegal Specialist</i> Jerri Duarte |
| | COM: 503/727-1000 FAX: 503/727-1117 | COM: 503/727-1119 FAX: 503/727-1117 | | <i>Financial Litigation Agent</i> Deb Hallen Sandy Wellman |
| | See FLU's Address | | <i>System Contact</i> Debbie Montano 503/727-1052 | USAOR TALON |
| | | | | |

FINANCIAL LITIGATION DIRECTORY

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|---|--|---|
| PA/ED 66 | Patrick L. Meehan <i>U.S. Attorney **</i> | 615 Chestnut St., Suite 1250 Philadelphia, PA 19106-4476 | <i>FLU Attorney</i> John N. Joseph Joseph Minni Virginia R. Powel | <i>Sup Financial Litigation Agent</i> Julie A. Skinner |
| | COM: 215/861-8200 FAX: 215/861-8209 | COM: 215/861-8200 FAX: 215/861-8535 | <i>System Contact</i> Dawn Ferrell Michelle Pushley 215/861-8200 | <i>Financial Litigation Agents</i> Renee Austin Harriet Elliott Gloria Diaz Dayna Jackson Carolyn Purnell Linda Statham Nancy Vanace |
| | Connors | See FLU's Address | | USAPAE TALON |
| PA/MD 67 | Thomas A. Marino <i>U.S. Attorney **</i> | P.O. Box 309 Scranton, PA 18501-0309 | <i>FLU Attorney</i> J. Justin Blewitt, Jr. | <i>Paralegal Specialists</i> Carroll Terruso Karen Musloski |
| | COM: 717/221-4482 FAX: 717/221-4582 | William J. Nealon Fed. Bldg. Washington & Linden St 3 rd FL Scranton, PA 18501-0309 | | |
| | Federal Building 3rd & Walnut Streets P.O. Box 11754 Harrisburg, PA 17108 | COM: 570/348-2800 FAX: 570/348-2816 | <i>System Contact</i> Warren Taldo 570/348-2800 | USAPAM TALON |
| PA/WD 68 | Mary Beth Buchanan <i>U.S. Attorney **</i> | 633 U.S. Post Off. & Crthse 7th Ave. & Grant Street Pittsburgh, PA 15219-1955 | <i>FLU Attorney</i> Michael C. Colville | <i>Financial Litigation Agent</i> Eleanor A. Carr Gale D. Fonner Margret Pohuly (DynCorp) Xenia Vranefevich Gail Ward |
| | COM: 412/644-3500 FAX: 412/644-4549 | COM: 412/644-4997 FAX: 412/644-5870 | <i>System Contact</i> Ronald R. Galicic 412/644-5440 | |
| | Ross | See FLU's Address | | USAPAW TALON |
| PR 69 | Guillermo Gil <i>U.S. Attorney</i> | Fed. Office Bldg., Rm 452 150 Carlos Chardon Avenue Hato Rey, PR 00918 | <i>FLU Attorneys</i> Rebecca Vargas-Vera 787/282-1842 | <i>Paralegal Specialist</i> Victor Rodriguez |
| | COM: 787/766-5656 FAX: 809/766-6022 | COM: 787/282-1861 FAX: 787/766-6219 | <i>System Contact</i> Marilyn Benitez 787/766-5656 | <i>Financial Litigation Agents</i> Edwin Benitez Valentin Diaz Wanda Gonzalez |
| | Condon | See FLU's Address | | USAPR TALON |
| RI 70 | Margaret Curran <i>U.S. Attorney **</i> | Fleet Center 50 Kennedy Plaza, 8th Floor Providence, RI 02903 | <i>FLU Attorney</i> Lisa Dinerman Michael P. Iannotti | <i>Paralegal Specialist</i> Sylvia S. Dulgarian Sandy Mascola |
| | COM: 401/528-5477 FAX: 401/528-5474 | COM: 401/528-5477 FAX: 401/528-5522 | <i>System Contact</i> Troy Edwards 401/528-5477 | |
| | Ross | See FLU's Address | | USARI TALON |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------|--|--|---|--|
| SC 71 | J. Strom Thurmond, Jr. <i>U.S. Attorney **</i> | 1441 Main St., Suite 500 Columbia, SC 29201 | <i>FLU Attorney</i> Henry D. Knight, Jr. | <i>Paralegal Specialist</i> Joyce L. Brooks |
| | COM: 803/929-3000 FAX: 803/254-2912 803/254-2889 | COM: 803/929-3000 FAX: 803/254-3184 | <i>System Contact</i> Karen Martin 803/929-3100 | <i>Financial Litigation Agents</i> Stephanie Jules Jeannette Munnett Christine Stone |
| | See FLU's Address | | | USASC TALON |
| SD 73 | James E. McMahon <i>U.S. Attorney **</i> | P.O. Box 5073 Sioux Falls, SD 57117-5073 | <i>FLU Attorney</i> Jan L. Holmgren | <i>Paralegal Specialist</i> Mary Dearborn |
| | COM: 605/330-4400 FAX: 605/330-4410 | Shriver Square, Suite 600 230 Phillips Avenue Sioux Falls, SD 57104-6321 | | <i>Financial Litigation Agent</i> Jan Walline |
| | See FLU's Address | COM: 605/330-4400 FAX: 605/330-4402 | <i>System Contact</i> Joe Pfeiffer 605/330-4400 | USASD TALON |
| TN/ED 74 | Harry S. Mattice, Jr. <i>U.S. Attorney **</i> | 800 Market Street, Suite 211 Knoxville, TN 37902 | <i>FLU Attorney</i> Betsy Tonkin | <i>Paralegal Agent</i> Donna K. Kidd |
| | COM: 865/545-4167 FAX: 865/545-4176 | COM: 865/545-4167 FAX: 865/545-4790 | <i>System Contact</i> Mike Beatty 865/545-4167 | <i>Financial Litigation Agent</i> Gail B. Holt Angie Kirby |
| | See FLU's Address | | | USATNE TALON |
| TN/MD 75 | James K. Vines <i>U.S. Attorney **</i> | 110 9th Avenue, South Suite A961 Nashville, TN 37203-3870 | <i>FLU Attorney</i> Richard Clippard | <i>Paralegal Specialist</i> Angela K. Smith |
| | COM: 615/736-5151 FAX: 615/736-5323 | | | <i>Financial Litigation Agent</i> Cathy Sherrill |
| | See FLU's Address | COM: 615/736-5151 FAX: 615/736-5323 | <i>System Contact</i> Brenda Keel 615/736-5151 | USATNM TALON |
| TN/WD 76 | Terrell L. Harris <i>U.S. Attorney **</i> | 200 Jefferson Ave. Suite 811 Memphis, TN 38103 | <i>FLU Attorney</i> Monica Simmons | <i>Financial Litigation Agent</i> Dranda Jones (DynCorp) Gloria Stephens Telicia Taylor |
| | COM: 901/544-4231 FAX: 901/544-4230 | COM: 901/544-4010 FAX: 901/544-4303 | <i>System Contact</i> Wesley A. Flaherty 901/544-4231 | |
| | 167 N. Main St. Memphis, TN 38103-1898 | | | USATNW TALON |
| TX/ED 78 | Matthew D. Orwig <i>U.S. Attorney **</i> | 110 N. College, Ste. 700 Tyler, TX 75702-7237 | <i>FLU Attorney</i> Randi Davis Russell | <i>Paralegal Specialist</i> Rosie Trimble |
| | COM: 409/839-2538 FAX: 409/839-2550 | COM: 903/590-1400 FAX: 903/590-1437 | | <i>Financial Litigation Agent</i> Kathy Nash |
| | 350 Magnolia St., St.150 Beaumont, TX 77701-2237 | | <i>System Contact</i> Patricia Mullins 903/590-1400 | USATXE TALON |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|----------------------------------|--|---|---|--|
| TX/ND 77 Ramsey | Jane J. Boyle <i>U.S. Attorney **</i> | Burnett Plaza Suite 1700 801 Cherry St. Fort Worth, TX 76102-6897 | <u>FLU Attorney</u> Mattie Peterson Compton Richard B. Vance | <u>Sup. Paralegal Specialist</u> Patrick Vincent |
| | COM: 214/659-8600 FAX: 214/767-2916 | | | <u>Financial Litigation Agents</u> Derenda Bailey George D. Beamon Michele Coomer Sue Meeks |
| | U.S. Fed. Bldg. & Courthouse, 3rd Floor 1100 Commerce St. Dallas, TX 75242-1699 | COM: 817/252-5257 FAX: 817/978-6361 | <u>System Contact</u> Karen Flores 817/252-5206 | USATXN TALON |
| | | | | |
| TX/SD 79 Ramsey | Michael T. Shelby <i>U.S. Attorney **</i> | P.O. Box 61129 Houston, TX 77208-1129 | <u>FLU Attorney</u> Joe Mirsky | <u>Paralegal Specialist</u> Debra Gregory |
| | COM: 713/567-9000 FAX: 713/718-3300 | U.S. Courthouse 515 Rusk Houston, TX 77002 | | <u>Financial Litigation Agents</u> Kimmy Logan Margie McQueen Osia Mitchell Jeanell Nero-Walker Brenda Williams Renee Zink |
| | | COM: 713/567-9000 FAX: 713/718-3391 | <u>System Contact</u> Les Studer 713/567-9000 | USATXS TALON/CLASS |
| | See FLU's Address | | | |
| TX/WD 80 Ramsey | Johnny K. Sutton <i>U.S. Attorney **</i> | 601 NW Loop 410, Suite 600 San Antonio, TX 78216-5512 | <u>FLU Attorney</u> Harold O. Atkinson 210/384-7250 | <u>Paralegal Specialist</u> Patsy Ybarra Tina Travieso |
| | COM: 210/384-7100 FAX: 210/384-7276 | COM: 210/384-7250 FAX: 210/384-7247 | | <u>Financial Litigation Agents</u> Mildred Alexander Barbara Dixon Martha Fowler (DynCorp) Maria McLaughlin |
| | | | <u>System Contact</u> Robin Sandin 210/384-7050 | USATXW TALON |
| | See FLU's Address | | | |
| UT 81 Ramsey | Paul M. Warner <i>U.S. Attorney **</i> | 185 South State, Suite 400 Salt Lake City, UT 84111-1506 | <u>FLU Attorney</u> Jill Parrish 801/325-3259 | <u>Paralegal Specialist</u> Debbie N. Koga |
| | COM: 801/524-5682 FAX: 801/524-6924 | COM: 801/524-5682 FAX: 801/524-3546 | | <u>Financial Litigation Agent</u> Corina C. Groneman Jody Nichols |
| | | | <u>System Contact</u> Doug Adams 801/325-3240 | USAUT TALON |
| | See FLU's Address | | | |
| VT 82 Ross | Peter W. Hall <i>U.S. Attorney **</i> | P.O. Box 570 Burlington, VT 05402 | <u>FLU Attorney</u> Nancy J. Creswell | <u>Paralegal Specialist</u> Randee Bloomberg |
| | COM: 802/951-6725 FAX: 802/951-6540 | 11 Elmwood Avenue, 3rd Fl. Burlington, VT 05401 | | |
| | | COM: 802/951-6725 FAX: 802/951-6540 | <u>System Contact</u> Solveig Overby 802/951-6725 | USAVT TALON |
| | See FLU's Address | | | |

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|---------------------------------|--|---|---|---|
| VI 94 Connors | David M. Nissman <i>U.S. Attorney</i> | Fed. Bldg. & U.S. Courthouse 5500 Veterans Dr., Suite 260 Charlotte Amalie St. Thomas, VI 00802-6424 | <i>FLU Attorney</i> Kim L. Chisholm Curtis V. Gomez | <i>Paralegal Specialist</i> Lori Cruz |
| | COM: 340/774-5757 FAX: 340/776-3474 | | | <i>Financial Litigation Agent</i> Loretta B. Bertrand |
| | | COM: 340/774-5757 FAX: 340/774-7903 | <i>System Contact</i> Daniel D. Leinenbach 340/774-5757 | |
| | See FLU's Address | | | USAVI TALON |
| VA/ED 83 | Paul J. McNulty <i>U.S. Attorney **</i> | World Trade Center 101 W. Main St, Suite 6500 Norfolk, VA 23510-1624 | <i>FLU Attorney</i> Mark A. Exley | <i>Paralegal Specialist</i> Shirley G. Parks Ginger Swartworth |
| | COM: 703/299-3700 FAX: 703/299-2584 | | | <i>Financial Litigation Agents</i> Deborah Chestnut Kim Gibson Brenda Lyles Darcel Sessoms Deborah Vohringer |
| | 2100 Jamieson Ave. Alexandria, VA 22314 | COM: 757/441-3179 FAX: 757/441-3286 | <i>System Contact</i> Bill Chronister 703/299-3795 | USAAVE TALON |
| | | | | |
| VA/WD 84 Clark | John L. Brownlee <i>U.S. Attorney **</i> | P.O. Box 1709 Roanoke, VA 24008-1709 | <i>FLU Attorney</i> Thomas L. Eckert | <i>Paralegal Specialist</i> Peggy D. Wertz |
| | COM: 540/857-2253 FAX: 540/857-2614 | Thomas B. Mason Building 105 Franklin Road, SW, St. 1 Roanoke, VA 24011-2305 | | <i>Financial Litigation Agents</i> Erin Butterworth Nancy H. Withers |
| | | COM: 540/857-2259 FAX: 540/857-2155 | <i>System Contact</i> Deborah J. Lawless 540/857-2760 | |
| | See FLU's Address | | | USAVAW TALON |
| WA/ED 85 Koga | James A. McDevitt <i>U.S. Attorney **</i> | P.O. Box 1494 Spokane, WA 99210-1494 | <i>FLU Attorney</i> Rolf H. Tangvald | <i>Paralegal Specialist</i> Carole DeLeon |
| | COM: 509/353-2767 FAX: 509/353-2766 | 920 W. Riverside, Suite 300 Spokane, WA 99210-1008 | | <i>Financial Litigation Agent</i> Kathy Fagyas |
| | | COM: 509/353-2767 FAX: 509/353-2766 | <i>System Contact</i> Debbie Hargreaves 509/353-2767 | |
| | See FLU's Address | | | USAAWE TALON |
| WA/WD 86 Clark | John McKay <i>U.S. Attorney **</i> | 601 Union Street, Suite 5100 Seattle, WA 98101-3903 | <i>FLU Attorney</i> Anastasia D. Bartlett | <i>Paralegal Specialist</i> Shelly Hiatt |
| | COM: 206/553-7970 FAX: 206/553-2054 | COM: 206/553-1866 FAX: 206/553-0114 | <i>System Contact</i> Sue Hooper 206/553-4192 | <i>Financial Litigation Agents</i> Lei Castillo Bonnie Walker |
| | See FLU's Address | | | USAAWA TALON |

FINANCIAL LITIGATION DIRECTORY

| DISTRICT & CODE FLPM | UNITED STATES ATTORNEY Address & Telephone | FINANCIAL LITIGATION UNIT LOCATION Address, Telephone & FAX | AUSA FLU & SYSTEM CONTACTS | FINANCIAL LITIGATION AGENTS (E-MAIL - SYSTEM) |
|--|---|--|---|--|
| WV/ND 87 Ramsey | Thomas E. Johnson <i>U.S. Attorney **</i> | P.O. Box 190 Elkins, WV 26241-0190 | <i>FLU Attorney</i> Rita R. Valdrini 304/234-0100 | <i>Paralegal Specialist</i> Diana L. Kreps |
| | COM: 304/234-0100 FAX: 304/234-0110 AWVN01 | Federal Building, Rm 327 300 3rd St. Elkins, WV 26241-0190 | | <i>Financial Litigation Agent</i> Jerilyn C. Alderman |
| | 1100 Main St., Ste. 200 Wheeling, WV 6003-0011 | COM: 304/636-1739 FAX: 304/636-1967 | | |
| | P.O. Box 591 Wheeling, WV 26003 | | <i>System Contact</i> Michael Malek 304/234-0100 | USAWVN TALON |
| WV/SD 88 Ramsey | Karl K. Warner, II <i>U.S. Attorney **</i> | P.O. Box 1713 Charleston, WV 25332-3234 | <i>FLU Attorney</i> Gary L. Call | <i>Paralegal Specialist</i> Vicky Sylvester |
| | COM: 304/345-2200 FAX: 304/347-5104 | 300 Virginia St. E., Suite 4000 Charleston, WV 25326 | | <i>Financial Litigation Agents</i> Patti Boley Marilyn Lynch |
| | | COM: 304/345-2200 FAX: 304/347-5104 | <i>System Contact</i> Mark Fleshman 304/345-2200 | |
| | See FLU's Address | | | USAWVS TALON |
| WI/ED 89 Clark | Steven M. Biskupic <i>U.S. Attorney **</i> | 530 Federal Building 517 E. Wisconsin Avenue Milwaukee, WI 53202-4580 | <i>FLU Attorney</i> Mel S. Johnson | <i>Paralegal Specialist</i> Mary Kay McSherry |
| | COM: 414/297-1700 FAX: 414/297-1713 | | | <i>Financial Litigation Agent</i> Coreen Johnson Jean Hutton Barbara Stormoen |
| | | COM: 414/297-1700 FAX: 414/297-1713 | <i>System Contact</i> Helen Evans 414/297-1700 | |
| | See FLU's Address | | | USAWIE TALON |
| WI/WD 90 Clark | Grant C. Johnson <i>U.S. Attorney</i> | P.O. Box 1585 660 West Washington Ave. Suite 200 Madison, WI 53703-2576 | <i>FLU Attorney</i> Heidi Luehring | <i>Paralegal Specialist</i> Tammy Duff |
| | COM: 608/264-5158 FAX: 608/264-5171 | | | <i>Financial Litigation Agent</i> Donna Hughes |
| | | COM: 608/264-5158 FAX: 608/264-5724 | <i>System Contact</i> Judith Holtz 608/264-5158 | |
| | See FLU's Address | | | USAWIW TALON |
| WY 91 Koga | Matthew H. Mead <i>U.S. Attorney **</i> | P.O. Box 668 Cheyenne, WY 82003 | <i>FLU Attorneys</i> Thomas D. Roberts | <i>Financial Litigation Agent</i> Kathy Eckhardt |
| | COM: 307/772-2124 FAX: 307/772-2123 | J.C. O'Mahoney Fed. Bldg. 2120 Capitol Ave. Rm 4002 Cheyenne, WY 82001 | | |
| | | COM: 307/772-2124 FAX: 307/772-2907 | <i>System Contact</i> Edward Clark 307/772-2124 | |
| | See FLU's Address | | | USAWY TALON |

| EXECUTIVE OFFICE FINANCIAL LITIGATION STAFF Address / Telephone | FINANCIAL LITIGATION STAFF | SUPPORT STAFF |
|--|---|--|
| Financial Litigation Staff, EOUSA Bicentennial Building 600 E Street, N.W., Room 7600 Washington, D.C. 20530-0001 | Laurie Levin , <i>Assistant Director</i> Brick Brewer , <i>Attorney-Advisor</i> Catherine Goodwin , <i>Attorney-Advisor on Detail</i> Darrell R. Curtis , <i>Management Analyst</i> Anna Evans , <i>Program Manager</i> Lucy Hurley , <i>Program Analyst</i> Judy Johnson , <i>Management Analyst</i> Patty Mayhew , <i>Administrative Specialist</i> Jeanne Montrese , <i>Management Analyst</i> George Rasmussen , <i>Investigations Coordinator</i> | Tracy King Darlene Washington <i>Secretaries</i> |
| COM: 202/616-6444 FAX: 202/616-6647 E-Mail: USAEOUSA | | |
| Darrell R. Curtis Exchange: Curtis, Darrell 185 South State, Suite 400 Salt Lake City, UT 84111-1506 801/964-9308 FAX: 801/524-4473 | | |
| EOUSA/Main Justice FAX: 202/514-0323 E-Mail: USAEOUSA | | |

| FINANCIAL LITIGATION PROGRAM MANAGERS | | | | | |
|---------------------------------------|--|--|--------------------------|--|--|
| FLPM E-Mail | Specialist / Telephone | Address | FLPM E-Mail | Specialist / Telephone | Address |
| Clark IA/N USAIA | Debra Clark | P.O. Box 74950 Cedar Rapids, IA 52407-4950 | Koga UT USAUT | Debbie Koga | 185 S. State Street, Rm 400 Salt Lake City, UT 84111 |
| | COM: 319/363-6333 FAX: 319/363-6110 | | | COM: 801/325-3211 FAX: 801/524-6924 | |
| Condon NY/N USANYN | Paul Condon | P.O. Box 7198 100 South Clinton St. Syracuse, NY 13261-7198 | Ramsey FL/M USAFLM | Janice Ramsey | Park Tower Building 400 N. Tampa St., Rm. 3200 Tampa, FL 33602 |
| | COM: 315/448-0914 FAX: 315/448-0646 | | | COM: 813/274-6026 FAX: 813/274-6247 | |
| Connors NJ USANJ | Kathleen M. Connors | Federal Building, Rm 502 970 Broad St. Newark, NJ 07102-2506 | Ross IN/S USAINS | Sue Ross | 10 W. Market St., Suite 2100 Indianapolis, IN 46204 |
| | COM: 973/645-2858 FAX: 973/645-3210 | | | COM: 317/229-2430 FAX: 317/226-6125 | |
| Gardner AL/M USAALM | Antrena Gardner | P.O. Box 197 Montgomery, AL 36101 | Ybarra TXW ATXW01 | Patsy Ybarra | 601 NW Loop 410, Ste 600 San Antonio, TX 78216-5512 |
| | COM: 334/223-7280 FAX: 334/223-7418 | | | COM: 210/384-7260 FAX: 210/384-7247 | |
| | Vacant | | | Vacant | |
| | | | | | |

PLEASE FAX/E-MAIL CHANGES TO THIS DIRECTORY TO:

FLU DIRECTORY

ATTENTION: DARRELL R. CURTIS

FAX: 801/524-4473 OR E-MAIL: Exchange. USAUT.DCURTIS

APPENDIX F**CERCLA BANKRUPTCY CONTACTS**

| <u>Office/Region</u> | <u>Name</u> | <u>Phone</u> | <u>FAX Number</u> |
|----------------------|-------------|--------------|-------------------|
|----------------------|-------------|--------------|-------------------|

HEADQUARTERS CONTACTS

| | | | |
|----------------|---------------|--------------|--------------|
| OECA-OSRE-RSD | John Wheeler | 202-564-4284 | 202-501-0269 |
| OECA-OSRE-PPED | Bob Kenney | 202-564-5127 | 202-564-0074 |
| OECA-NEIC | Nancy Nibling | 303-236-6286 | 303-236-7573 |
| OECA-ORE | David Nielsen | 202-564-4022 | 202-564-0010 |
| OGC-Waste | Alan Carpien | 202-564-5507 | 202-564-5531 |
| OGC-Claims | David Lloyd | 202-564-5436 | 202-564-5531 |

REGIONAL CONTACTS

| | | | |
|------|------------------|--------------|--------------|
| I | Eve Vaudo | 617-918-1089 | 617-918-1809 |
| II | Doug Fischer | 212-637-3180 | 212-637-3104 |
| III | Carlyn W. Prisk | 215-814-2625 | 215-814-3005 |
| | Tom Cisto | 215-814-2634 | 215-814-2603 |
| IV | Kevin Beswick | 404-562-9580 | 404-562-9487 |
| V | Roger Grimes | 312-886-6595 | 312-886-0747 |
| | (Rick Nagle) | 312-353-8222 | 312-886-0747 |
| VI | Terry Sykes | 214-665-2158 | 214-665-3177 |
| VII | Barbara Peterson | 913-551-7277 | 913-551-7925 |
| VIII | Andrea Madigan | 303-312-6904 | 303-312-6953 |
| IX | Lewis Maldonado | 415-972-3926 | 415-947-3570 |
| X | Ted Yackulic | 206-553-1218 | 206-553-0163 |

DEPARTMENT OF JUSTICE CONTACTS

| | | | |
|----------------------|----------------|------------------|--------------|
| National Coordinator | Alan Tenenbaum | 202-514-5409 | 202-616-6584 |
| Regs 1 & 2 | Henry Friedman | 202-514-5268 | 202-616-2427 |
| Regs 3 & 8 | David Street | 202-514-5471 | 202-616-6583 |
| Regs 4 & 9 | Jon Mueller | 202-514-0056 | 202-514-2583 |
| Region 5 | Randy Stone | 202-514-1308 | 202-616-6584 |
| Region 6 | Sam Blesi | 202-514-1466 | 202-514-2583 |
| Regs 7 & 10 | Wayne Ault | 202-305-0300 | 202-514-8395 |
| AUSA-DE | Ellen Slights | 302-573-6277x158 | 302-573-6220 |

Department of Treasury

| | | |
|---------------------------------------|--------------|--------------|
| Charlie Schwan (Financial Management) | 202-874-9287 | 202-874-8372 |
| Mike Goodwin (Bureau of Public Debt) | 304-480-5160 | 304-480-5176 |
| Steve Middlebrook (attorney) | 874-8422 | |

Department of Interior

| | | |
|------------------|--------------|--------------|
| Triscilla Taylor | 202-208-6477 | 202-208-3877 |
|------------------|--------------|--------------|

U. S. Trustees Office

| | | |
|-----------------------------------|--------------|--------------|
| Marti Davis (General Counsel) | 202-616-1391 | |
| Joe Guzinski (Assistant Director) | 202-616-9193 | 202-616-4576 |

APPENDIX G

MODEL REFERRAL LETTER TO ACCOMPANY CCLR

Certified Mail - Return Receipt Requested

[Date]

U.S. Department of Justice
National Central Intake Facility
Suite 220
1110 Bonifant St.
Silver Spring, Maryland 20910-3358

RE: [Name of Respondent(s)],
[Address of Respondent(s)],
[Referral for collection of administrative debt]

By means of this letter, the United States Environmental Protection Agency Region _____ (“EPA”) submits the attached Claims Collection Litigation Report (CCLR) referring for collection the above-referenced claim. [If referring a claim with multiple, joint and severally liable respondents, include the following: “This claim involves multiple, joint and severally liable respondents.”]

The claim arises from an administrative settlement EPA entered into with the respondent(s) [insert name(s)] under the authority found in section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).¹ Section 122(h) authorizes EPA to enter into administrative agreements with private parties for the recovery of costs EPA has incurred in responding to a release or threatened release of a hazardous substance. The settlement makes no determination as to respondent’s alleged liability. Furthermore, section 122(h)(3) of CERCLA states that if a person fails to pay a claim settled under section 122(h) of CERCLA, EPA shall request that the Department of Justice bring a civil action to recover the amount of the claim (plus interest, costs and attorney’s fees), and that in such an action the terms of the administrative settlement shall not be subject to judicial review.

Under paragraph ____ of the attached settlement, the respondent(s) [insert name(s)] agreed to pay EPA [insert dollar amount] on [insert due date, settlement will usually require payment within 30 days of the effective date of the agreement]. The respondent(s) failed to pay on the aforementioned due date. On [insert date(s)] EPA sent a [“Notice of Violation for Late Payment” or dunning letter - if more than one dunning letter was sent, include dates of each letter] to the respondent(s) requesting payment on [insert due date(s)]. The respondent(s) have

¹ 42 U.S.C. § 9622(h).

not complied with the [Notice or dunning letter(s)]. Under paragraph ____ of the settlement, interest will continue to accrue [insert language found in the settlement, *e.g.*, “until payment is received.”]. [If applicable, include: “In addition, stipulated penalties may accrue until payment is received based on the terms of the agreement.”]

Please find attached a completed CCLR, as well as a copy of the settlement and other supporting documentation.

If you have any questions concerning this matter, please contact [name] at [telephone number].

Sincerely,

[Name]
[Title]
[Office]

Attachments

cc: [Appropriate Regional Staff]

APPENDIX G

INSTRUCTIONS FOR COMPLETING THE *CLAIMS COLLECTION LITIGATION REPORT (CCLR)* FOR SUM-CERTAIN ADMINISTRATIVE DEBTS

Regions need to complete the CCLR for any sum-specific administrative debt where the principal amount is \$1 million or less (excluding interest, costs, and penalties). EPA Regional offices should complete all appropriate boxes and send the completed form to DOJ's National Central Intake Facility (see CCLR Mailing Instructions below). Incomplete CCLRs will be returned to the Region.

These instructions are keyed to the numbered blocks on the CCLR.

1. **Agency Claim No.**: Insert Site Spill ID No. Provide on the top of each page of the CCLR.
2. **Date**: Insert date CCLR is sent to DOJ's National Central Intake Facility.
3. **To**: Insert name and complete address of the AUSA and Federal Litigation Unit (FLU) responsible for the district where the debtor resides (please refer to the attached AUSA and FLU directory - Attachment 1).
4. **From**: Insert name and complete mailing address of the person who should receive correspondence in connection with the matter.
5. **Debtor's Name and Address**: If an individual is liable for the debt, insert first, middle, and last name, and full address of the primary individual (information on additional debtors can be provided in boxes 34-45). If a company is liable for the debt, insert the full name and primary address of the company. Please ignore directions on the CCLR regarding foreclosure.
6. **Debtor's SSN/EIN**: If an individual is liable for the debt, insert the individual's Social Security Number here. If a company is liable for the debt, insert the company's Employer Identification Number. If both an individual and a company are liable for the debt, insert both the individual's SSN and the company's EIN. If the SSN or EIN is unobtainable, insert "unknown."
7. **Default Date**: Insert date debt was originally due.

8. **SOL Expiration Date:** In most cases, this will be six years from the default date. If the debt was the subject of dispute resolution, the expiration date is one year after the completion of dispute resolution, or six years after the default date, whichever comes later. Questions regarding the appropriate statute of limitations can be directed to the Office of Site Remediation Enforcement's Regional Support Division.
9. **Basis for Expiration Date:** The six year statute of limitations that will apply in most cases is discussed in 28 U.S.C. 2415. (*See #8 above*)
10. **Referred for:** Insert "X" in box next to "enforced collection." Leave 10a blank. If a debtor is in bankruptcy do not use CCLR (use a proof of claim referral to DOJ's Environmental Enforcement Section).
11. **Amount of Claim:**
- Insert principal amount in space (a), and interest due in space (b).
 - Insert in the second line of space (b) the date through which the Region calculated interest due.
 - Leave space (c) blank.
 - Insert the calculation of applicable stipulated penalties, if any, in space (d). Also, note in space (d) the last date used for the calculation, as well as the rate at which stipulated penalties will continue to accrue under the terms of the settlement (*e.g.*, \$1000 per day).
 - Total the amounts in spaces (a), (b), and (d) and put that amount in space (e).
- If the principal amount in space (a) is over \$1 million do not use a CCLR; rather, refer the debt to the Department of Justice.**
12. **Annual Rate of Interest:** Insert Superfund rate of interest as of the date of the referral. Also, state that the Superfund interest rate changes on October 1st of each year.
13. **Compromise Amount or %:** Leave blank.
14. **Basis of Claim:** Insert "X" in box next to "Claim not evidenced by note but by the following statute or regulation;" and write in "see attached settlement" in the blank. Attach a copy of the settlement, any DOJ approval letter (because the settlement contained a compromise at a site at which total response costs exceed \$500,000, excluding interest, or because it was issued under AG authority), as well as the name of the DOJ attorney who handled the approval. If the settlement did not become effective until issuance of an EPA notice stating that public comments, if any, did not require modification of or withdrawal from the settlement, include copy of notice.
15. **Agency Contact:** Insert the name of Regional contact who can answer questions regarding the matter. This may be the same person found in box #4.

THE INDIVIDUAL DEBTOR

16. **Debtor's Name**: Insert primary individual debtor's full name.
17. **AKA (Also Known As)**: Insert any other name(s) debtor is known to have used, including maiden name if applicable, and the name debtor used on the settlement if different from debtor's name in blocks 5 and 16. If no other names are known leave blank.
18. **Date of Birth**: If known or obtainable, insert debtor's date of birth.
19. **Home phone number**: If known or obtainable, insert debtor's home phone number with area code.
20. **Employer**: If known or obtainable, insert full name and address of all of debtor's employers.
21. **Debtor's Job Title**: If known or obtainable, insert debtor's job title/description.
22. **Work Phone**: If known or obtainable, insert debtor's work phone number with area code.
23. **Salary**: If known or obtainable, insert debtor's salary, and indicate whether gross or net and frequency paid.
24. **Service Site**: Insert full address where a summons or complaint can be personally served on debtor. A post office box cannot be served.
25. **Verified By**: Insert name of EPA employee who verified data provided in the CCLR.

THE CORPORATE DEBTOR

26. **Name**: Insert full name of company debtor.
27. **Address**: Insert company debtor's complete address.
28. **DBA**: Insert any other name company debtor may use (this could be another name the company does business under).
29. **Phone**: Insert company debtor's phone number, including the area code.
30. **Type of Business**: Insert the form of debtor's business, such as, corporation, sole proprietorship, partnership, etc. If partnership, use CCLR Supplementary Data Sheet to list names and addresses of all partners.
31. **Date and State of Incorporation**: If known, insert date incorporated and state of

incorporation.

32. **Service Agent**: Insert name, phone number, and address of agent authorized to accept service of summons and complaint for debtor, if any.
33. **Verification**: Insert name and phone number of EPA employee who verified data included in the CCLR.

CO-DEBTOR(S)/GUARANTOR(S)/CO-SIGNER(S)

Cases with multiple, “joint and severally” liable debtors can be referred to the FLUs. Complete boxes 34-45, if applicable, for each debtor. Attach additional pages if needed.

34. **Name(s)**: Insert full name(s) of any co-debtor(s) who may also be liable for this debt if you want DOJ/USAO to try to collect all or part of the debt from them.
35. **SSN/EIN**: If an individual is co-labile for the debt, insert the individual's Social Security Number here. If a company is co-labile for the debt, insert the company's Employer Identification Number. If both an individual and a company are co-labile for the debt, insert both the individual's SSN and the company's EIN. If the SSN or EIN is unobtainable insert “unknown.”
36. **AKA (Also Known As)**: Insert any other name(s) co-debtor is known to have used, including maiden name if applicable, and the name co-debtor used on the settlement if different from co-debtor's name in blocks 5 and 16. If no other names are known, leave blank.
37. **Date of Birth**: If known or obtainable, insert co-debtor's date of birth.
38. **Home phone number**: If known or obtainable, insert co-debtor's home phone number with area code.
39. **Employer**: If known or obtainable, insert full name and address of all of co-debtor's employers.
40. **Work Phone**: If known or obtainable, insert co-debtor's work phone number with area code.
41. **Debtor's Job Title**: If known or obtainable, insert co-debtor's job title/description.
42. **Salary**: If known or obtainable, insert co-debtor's salary, and indicate whether gross or net and frequency paid.
43. **Service Site**: Insert full address where a summons or complaint can be personally served on co-debtor. A post office box cannot be served.

44. **Basis of Liability**: Write in “see attached settlement” in the blank.
45. **Verified By**: Insert name of EPA employee who verified data provided in the CCLR.

FORECLOSURES

The section of the CCLR on foreclosures is not applicable. Leave boxes 46-50 blank.

DEBTOR’S ABILITY TO PAY

51. **Property Interests**: If known, insert data on any real estate or other property, such as cars, boats, etc., the debtor(s) and/or co-debtor’s own or are buying. Include data on the value of the property, the county or counties in which it is located, any other liens, and what equity is available to satisfy the claim.
52. **Assets**: Insert data on any debtor assets in which the Government has a secured interest (i.e., CERCLA lien).
53. **Other Assets**: Insert data on any other assets that the Government might be able to attach to pay this claim, such as bank or credit union addresses and account numbers.

AGENCY CLAIM HISTORY

54. **Last Demand Date**: Insert date of last demand on debtor to pay this claim and summary of the debtor’s response to that demand.
55. **Compromise**: Insert details of any compromise or settlement offers made by, or to, the debtor and any responses to them. Attach any correspondence which provided the debtor the opportunity to discuss the debt with EPA (e.g., “Notice of Violation for Late Payment, dunning letter).
56. **Collection Actions Taken**: Insert data on actions taken by the Region to collect on this claim. Note whether partial payment was made. If needed attach supplementary data sheet.

ADDITIONAL INFORMATION

57. **HHS Loans**: Leave blank.
58. **Additional Agency Comments**: Insert any additional comments or information which might help locate the debtor and collect this claim.
59. **Checklist**: Check off boxes corresponding to “CCLR,” “Certificate of Indebtedness,” “Original Notes or Other Evidence of Debt” (i.e., the settlement), and “Summary of Collection Actions taken by the Agency.” If the Region has a credit report for the debtor, check the corresponding box and attach the report. Leave blank boxes pertaining to bankruptcy and foreclosure.

CCLR SUPPLEMENTARY DATA SHEET - ANTICIPATED DEFENSES

Use one supplementary data sheet to discuss “anticipated defenses.” Clearly title the page “anticipated defenses” and include the following discussion:

Beyond any potentially applicable contract defenses, which do not normally arise as defenses to payment under CERCLA settlements, the only other basis for excusing the respondent’s payment obligation is if the respondent can demonstrate that it currently does not have the financial ability to meet the obligation, nor will it in the foreseeable future.

The respondent’s liability under the statute is not at issue. In fact, the settling respondent(s) entered into the settlement to avoid a determination of their alleged liability. Therefore, it would be inappropriate for a party, at this juncture, to refuse to pay on the basis that it is not liable. Furthermore, section 122(h)(3) of CERCLA states that if a person fails to pay a claim settled under section 122(h) of CERCLA, EPA shall request that the Department of Justice bring a civil action in an appropriate district court to recover the amount of the claim (plus interest, costs and attorney’s fees), and that in such an action “the terms of the settlement shall not be subject to review.”

[If a party has raised an inability to pay defense, note that here and attach any supporting documentation (*e.g.*, party’s response to a CERCLA section 104(e) request for financial information). Also, provide the Region’s analysis of the party’s inability to pay claim.]

CCLR MAILING INSTRUCTIONS

Mail the completed CCLR to:

U.S. Department of Justice
National Central Intake Facility
Suite 220
1110 Bonifant St.
Silver Spring, MD 20910-3358

CLAIMS COLLECTION LITIGATION REPORT (CCLR)

| | | |
|---------------------|----|------|
| 1. Agency Claim No. | 2. | Date |
|---------------------|----|------|

THE CLAIM AT A GLANCE

| | |
|-------------------------------|---------------------------------|
| 3. To: (Use Complete Address) | 4. From: (Use Complete Address) |
|-------------------------------|---------------------------------|

5. Debtor's Name & Address

* (If a FORECLOSURE, Insert address of property here so claim will be referred to USAO where property is located.)

| | | |
|------------------------|----|---------------|
| 6. Debtor's SSN / EIN: | 7. | Default Date: |
|------------------------|----|---------------|

| | | |
|------------------------|----|--------------------------------|
| 8. SOL Expiration Date | 9. | Basis for SOL Expiration Date: |
|------------------------|----|--------------------------------|

| | |
|--|--|
| <p>10. <u>Referred for:</u></p> <p><input type="checkbox"/> Enforced Collection</p> <p><input type="checkbox"/> Judgment Lien Only</p> <p><input type="checkbox"/> Renew Judgment Lien Only</p> <p><input type="checkbox"/> Renew Judgment Lien & Enforce Collection</p> <p><input type="checkbox"/> Program Enforcement</p> <p><input type="checkbox"/> Foreclosure Only</p> <p><input type="checkbox"/> Foreclosure & Deficiency Judgment</p> <p><input type="checkbox"/> File Proof of Claim Only</p> <p>Comments -</p> <p><input type="checkbox"/> Other - real property lien</p> <p><u>DOJ Concurrence for:</u></p> <p><input type="checkbox"/> Compromise (4 CFR 103)</p> <p><input type="checkbox"/> Suspension (4 CFR 104)</p> <p><input type="checkbox"/> Termination (4 CFR 105)</p> <p>10a. DEBTOR IN BANKRUPTCY:</p> <p>Chapter: 7 11 12 13 Unknown</p> <p style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> | <p>11. <u>Amount of Claim:</u></p> <p>a. Total Principal Due _____</p> <p>Total Interest Due _____</p> <p>Through 04/29/99 _____</p> <p>c. Total Administrative Charges Due _____</p> <p>d. Total Penalty Charges Due _____</p> <p>e. Total Amount of Claim _____</p> <p>12. Annual Rate Of Interest _____</p> <p>13. Compromise Amount or % _____</p> |
|--|--|

| | |
|--|--|
| <p>14. Basis of Claim:</p> <p><input type="checkbox"/> Claim evidenced by note, guaranty, or surety obligation: OR</p> <p><input type="checkbox"/> Claim not evidenced by note but by the following statute or regulation;</p> | <p>15. Agency Contact:</p> <p>Name:</p> <p>Phone No.: (FTS and Commercial)</p> |
|--|--|

Agency Claim No.

THE INDIVIDUAL DEBTOR

| | |
|---|--|
| 16. Debtor's Full Name: | 17. A.K.A.: |
| 18. Date of Birth: | 19. Home Phone No. (Include Area Code): |
| 20. Employer's Name and Address: | 21. Debtor's Job Title: |
| | 22. Work Phone No. (Include Area Code): |
| | 23. Debtor's Salary: \$ _____ [] Gross [] Weekly [] Monthly [] Net [] Biweekly [] Annually |
| 24. Best place for Marshal to serve process by personal delivery: (Do <u>NOT</u> give P.O. Box) [] Home [] Work Other (Specify): | 25. Name of person who verified above data, date verified, and how verified: |

THE COMPANY DEBTOR

Note: If this claim is to collect a debt owed by an entity other than an individual person, such as a company, partnership, corporation, etc., additional information will be required. In such cases, insert the data called for in blocks 26-33 below and use CCLR Supplementary Data Sheets to furnish additional information, as appropriate.

| | |
|-------------------------|------------------------------------|
| 26. Debtor's Full Name: | 27. Debtor's Address: |
| 28. D.B.A.: | 29. Phone No. (Include Area Code): |
| 30. Type of Business: | 31. Date & State of Incorporation: |

Agency Claim No.

32. Name, Address & Phone Number (Include Area Code) of Service Agent:

33. Name of person who verified above company debtor data, date verified, and how verified:

CO-DEBTOR(S)/GUARANTOR(S)/CO-SIGNER(S)

34. Full Name(s):

35. SSN / EIN:

36. A.K.A.:

37. Date of Birth:

38. Home Address/Business & Phone No. (Include Area Code)

39. Employer's Name & Address:

40. Work Phone No. (Include Area Code):

43. Best place for Marshal to serve process by personal delivery: (Do NOT give P.O. Box) ☐ Home ☐ Work
Other (Specify):

41. Co-Debtor's Job Title:

42. Salary: \$ _____

☐ Gross ☐ Weekly ☐ Monthly
☐ Net ☐ Biweekly ☐ Annually

44. Basis of Liability:

45. Name of person who verified above data on co-debtor(s)/guarantor(s)/co-signer(s), date verified, and how verified:

(CCLR)

Agency Claim No.

FORECLOSURES

Note: If this claim is referred for foreclosure only or foreclosure and a deficiency judgment, the following additional data will be required. In such cases, insert the date called for in blocks 46 - 50 below and use CCLR Supplementary Data Sheets to furnish additional information, as appropriate.

46. Debtor's Address:

47. Mortgage Recording Information:

County_____

Date of Recording _____

Volume (Liber)

Page Number (Folio)

48. Property Occupancy:

Debtor Resides on Property: Yes [] No []

Property is Abandoned: Yes [] No []

Property is occupied by tenant: Yes [] No []

49. If recovery of chattels is included in the foreclosure, list the chattels here and provide more detailed information on the CCLR Supplementary Data Sheet:

50. List other Federal liens against property:

DEBTOR'S ABILITY TO PAY

51. The debtor/co-debtor owns or is buying the following real estate or other property (cars, boats, etc.):

52. Assets in which the Government has a secured interest:

53. Other Assets: (savings/checking accounts, provide bank and/or credit union name(s) and address(s) and account number(s); deceased debtor's estate, provide administrator/executor information; other sources of income):

NAME OF BANK

ACCOUNT NUMBER

ACCOUNT TYPE

(CCLR)

Agency Claim No.

AGENCY CLAIM HISTORY

| | |
|--|--|
| 54. Date of last demand for payment to debtor and summary of debtor's response: Company default and no longer during business | 55. Details of any compromise or settlement offers made by, or to, the debtor and any responses thereto: |
| 56. Summary of collection actions taken by agency: | |

ADDITIONAL INFORMATION

| | |
|--|---|
| 57. For HHS loans: Medical or other professional association locator data: | 58. Additional agency comments: |
| 59. <u>AGENCY CHECK LIST</u> : CCLR package must contain: <u>In General</u> : <input type="checkbox"/> CCLR <input type="checkbox"/> Certificate of Indebtedness <input type="checkbox"/> Credit Report <input type="checkbox"/> Payment History, if any <input type="checkbox"/> Original Notes or Other Evidence of Debt, Including Assignments, If Any <input type="checkbox"/> Summary of Collection Actions Taken by Agency <u>Debtor in Bankruptcy</u> : <input type="checkbox"/> Proof of Claim, or Copy Thereof, Attached | <u>For Foreclosures</u> : <input type="checkbox"/> CCLR <input type="checkbox"/> Credit Report <input type="checkbox"/> Original Promissory Note <input type="checkbox"/> Original Real Estate Mortgage <input type="checkbox"/> Original Statement of Account/Affidavit of Amount Due <input type="checkbox"/> Title Evidence, If Available <input type="checkbox"/> Directions to Property If No Street Address Available <input type="checkbox"/> Chattel Lien Searches If Chattels Involved |

(CCLR)

Agency Claim No.

CCLR SUPPLEMENTARY DATA SHEET

Use this sheet to provide any additional information that might help locate those from whom the claim might be collected and any assets that might be available to satisfy a judgment in favor of the United States. Please indicate the number(s) of the block(s) on the CCLR that any additional data is intended to supplement.

Agency Claim No.

ACKNOWLEDGMENT FORM

------(FOLD HERE)-----

DOJ/USAO ACKNOWLEDGMENT TO AGENCY

Debtor's Full Name:

Agency Claim No.:

DOJ/USAO Number:

Received at DOJ/USAO on:

Received at DOJ/USAO by:

(Print Name)

Questions?

Contact:

(Print Name & Phone Number (Include Area Code) of DOJ/USAO Contact)

------(FOLD HERE)-----

66.

FILL IN WITH EPA CONTACT
AND
RETURN ADDRESS

**CONTENT OF REFERRAL
TO DOJ FOR COLLECTION OF DELINQUENT DEBTS UNDER
CERCLA JUDICIAL AND ADMINISTRATIVE SETTLEMENTS**

I. FAILURE TO PAY AMOUNT DUE UNDER JUDICIAL CONSENT DECREE

A. FAILURE TO PAY SUM CERTAIN DUE ON A DATE CERTAIN (*i.e.*, “past cost” payment or “cashout” payment).

Under a judicial consent decree, a delinquency of a sum certain payment due on a date certain will trigger enforcement and collection efforts by the AUSA without further notice from EPA. **No referral is needed, however, follow-up with the AUSA might be necessary.**

B. FAILURE TO PAY FUTURE RESPONSE COST BILL UPON DEMAND BY EPA.

A “Collection Referral for Nonpayment of CERCLA Future Response Cost Due under Judicial Consent Decree” is needed from the EPA Regional Administrator (or his/her delegatee) to the Assistant Attorney General, Environment and Natural Resources Division, or his/her delegatee (“DOJ-ENRD”) containing the following information and documents:

1. Background Information

- a. Case name
- b. Site name and location
- c. DOJ case number
- d. Type (example: CERCLA §§106/107 RD/RA) and date of entry of CD that created obligation to pay
- e. Name of DOJ attorney assigned to CD
- f. Name and telephone number of Regional attorney
- g. Name and current address of Settling Defendant debtor(s) who has/have failed to pay
- h. Statement of CD payment violation (example: Failure to pay \$250,000 future response costs bill upon demand by EPA)
- i. Copy of CD

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the CD has been followed by EPA and that the Settling Defendant(s) have had the opportunity to pursue any administrative remedies (dispute resolution) provided by the CD, including whether the Settling Defendant(s) have been in contact with EPA. Cross-reference relevant CD Sections/Paragraphs (*e.g.*, Definitions, Reimbursement of Response Costs, Dispute Resolution, Stipulated Penalties). Attach, if applicable:
 1. Dated copy and proof of receipt of EPA's demand for future response costs with attachments (generally the standard, Regionally-prepared cost summary and, if applicable, the standard DOJ-prepared cost summary)
 2. Copy of Settling Defendant(s)' written objection to payment
 3. Copy of transmittal letter and check accompanying Settling Defendant(s)' payment of uncontested costs
 4. Copy of correspondence that established and funded an interest-bearing escrow account for contested costs
 5. Copy of Settling Defendant(s)' invocation of dispute resolution
 6. Documents generated during informal dispute resolution
 7. Documents generated during formal dispute resolution, including, as applicable, Settling Defendant(s)' invocation of formal dispute resolution, Settling Defendant(s) and EPA's Statements of Position, and EPA's final decision
- b. State if additional collection efforts, beyond those required by the CD, have been made by EPA. Attach, if applicable:
 1. Dated copy and proof of receipt of any EPA written communication to Settling Defendant(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Settling Defendant(s)
 4. Copy of written (and summary of any telephone) responses by Settling Defendant(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Settling Defendant(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Settling Defendant(s) has/have an inability to pay, state that conclusion. If a Settling Defendant has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Settling Defendant may have an inability to pay, include any information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (*e.g.*, Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of future response costs demanded, plus interest running from the date of the demand until the date of payment at the rate specified by the CD. This may also include payment of stipulated penalties. If stipulated penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the CD, evidence necessary to prove the elements of those causes of action must be provided.)

II. FAILURE TO PAY AMOUNT DUE UNDER ADMINISTRATIVE ORDER ON CONSENT OR ADMINISTRATIVE AGREEMENT

A. FAILURE TO PAY SUM CERTAIN \$1 MILLION OR LESS DUE ON A DATE CERTAIN.

For sum certain debts where the principal amount due is \$1 million or less (excluding interest, costs, and stipulated penalties), the referral should be sent to the U.S. Department of Justice, National Central Intake Facility, Suite 220, 1110 Bonifant St., Silver Spring, Maryland, 20910-3358, which will transmit the referral to the appropriate United States Attorney Office Financial Litigation Unit. The referral will consist of filling out a Claim Collection Litigation Report (CCLR). A CCLR with instructions on how to complete the form are separately attached (*See* Attachment 5), along with a model referral letter (*See* Attachment 4).

B. FAILURE TO PAY SUM CERTAIN OVER \$1 MILLION DUE ON A DATE CERTAIN (*i.e.*, “past cost” payment or “cashout” payment).

A “Collection Referral for Nonpayment of CERCLA Administrative [Past/Cashout] Response Costs Due under Administrative [Order on Consent/Agreement]” is needed from the EPA Regional Administrator (or his/her delegatee). For sum certain debts where the principal amount due is greater than \$1 million (excluding interest, costs, and stipulated penalties), the referral should be sent to the DOJ-ENRD). The referral should contain the following information and documents:

1. Background Information

- a. Site name and location
- b. Type (examples: CERCLA §§106/122 Removal AOC; CERCLA §§104/122 RI/FS AOC; CERCLA §122(h) Agreement) and effective date of AOC/Agreement creating obligation to pay
- c. EPA Docket Number of AOC/Agreement
- d. If AOC/Agreement was approved by DOJ prior to issuance (because it contained a compromise at a site where total response costs exceed \$500,000, excluding interest, or because it was issued under AG authority), then provide a copy of DOJ approval letter and name of DOJ attorney who handled the approval
- e. Name and telephone number of Regional attorney
- f. Name and current address of Respondent debtor(s) who has/have failed to pay
- g. Statement of AOC/Agreement payment violation (example: Failure to pay negotiated amount of [past/cashout] response costs as required by AOC/Agreement)
- h. Copy of AOC/Agreement
- i. If AOC/Agreement did not become effective until issuance of an EPA notice stating that public comments, if any, did not require modification of or withdrawal from the settlement, then include copy of notice

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the AOC/Agreement has been followed by EPA and that the AOC/Agreement did not contain any process for disputing the amount owed (because it was a negotiated sum certain). Cross-reference relevant Sections/Paragraphs of the AOC/Agreement (*e.g.*, Reimbursement of Response Costs, Stipulated Penalties). State that Respondent has failed to make payment as required by the terms of the AOC/Agreement.
- b. State if additional collection efforts, beyond those required by the AOC/Agreement, have been made by EPA. Attach, if applicable:
 1. Dated copy and proof of receipt of any EPA communication to Respondent(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Respondent(s)
 4. Copy of written (and summary of any telephone) responses by Respondent(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Respondent(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Respondent(s) has/have an inability to pay, state that

conclusion. If a Respondent has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Respondent may have an inability to pay, include information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (e.g., Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of [past/cashout] costs required to be paid by the AOC/Agreement, plus interest running from the due date under the AOC/Agreement until the date of payment at the rate specified by the AOC/Agreement. This may also include payment of stipulated penalties. If stipulated penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the AOC/Agreement, evidence necessary to prove the elements of those causes of action must be provided.).

C. FAILURE TO PAY FUTURE RESPONSE COST BILL UPON DEMAND BY EPA.

A “Collection Referral for Nonpayment of CERCLA Future Response Cost Due under Administrative [Order on Consent/Agreement]” is needed from the EPA Regional Administrator (or his/her delegatee) to the DOJ-ENRD containing the following information and documents:

1. Background Information

- a. Site name and location
- b. Type (examples: CERCLA §§106/122 Removal AOC, CERCLA §§104/122 RI/FS AOC, or CERCLA §122(h) Agreement) and effective date of AOC/Agreement creating obligation to pay
- c. EPA Docket Number of AOC/Agreement
- d. If AOC/Agreement was approved by DOJ prior to issuance (because it contained a compromise at a site at which total response costs exceed \$500,000, excluding interest, or because it was issued under AG authority), then provide a copy of DOJ approval and name of DOJ attorney who handled the approval
- e. Name and telephone number of Regional attorney
- f. Name and current address of Respondent(s) who has/have failed to pay
- g. Statement of AOC/Agreement payment violation (example: Failure to pay \$250,000 future response costs bill upon demand by EPA)
- h. Copy of AOC/Agreement
- i. If AOC/Agreement did not become effective until issuance of an EPA notice stating that public comments, if any, did not require modification of or withdrawal from the settlement, then include copy of notice

2. Summary of Collection Efforts to Date

- a. State that the collection process set forth in the AOC/Agreement has been followed by EPA and that Respondent(s) have had the opportunity to pursue any administrative remedies

(dispute resolution) provided by the AOC/Agreement. Cross-reference relevant AOC/Agreement Sections/Paragraphs (*e.g.*, Definitions, Reimbursement of Response Costs, Dispute Resolution, Stipulated Penalties). Attach, if applicable:

1. Dated copy and proof of receipt of EPA's demand for future response costs with attachments (generally the standard, Regionally-prepared cost summary and, if applicable, the standard DOJ-prepared cost summary)
 2. Copy of Respondent(s) written objection to payment
 3. Copy of transmittal letter and check accompanying Respondent(s)' payment of uncontested costs
 4. Copy of correspondence that established and funded an interest-bearing escrow account for contested costs
 5. Copy of Respondent(s)' invocation of dispute resolution
 6. Documents generated during informal dispute resolution
 7. Documents generated during formal dispute resolution, including, as applicable, Respondent(s) invocation of formal dispute resolution, Respondent(s) and EPA's Statements of Position, and EPA's final decision
- b. State if additional collection efforts, beyond those required by the AOC/Agreement, have been made by EPA. Attach, if applicable:
1. Dated copy and proof of receipt of any EPA communication to Respondent(s) (*e.g.*, Notice of Noncompliance) concerning failure to pay amount demanded
 2. Dated copy and proof of receipt of EPA demand for stipulated penalties
 3. Copy of any additional documentation for disputed costs that has already been provided to Respondent(s)
 4. Copy of written (and summary of any telephone) responses by Respondent(s)

3. Anticipated Defenses

State any defenses to payment that have or may be asserted by Respondent(s). (If covered by previous section, use cross-reference.)

4. Assets and Income of Debtor(s)

If the Region has no reason to believe that Respondent(s) has/have an inability to pay, state that conclusion. If a Respondent has claimed an inability to pay the amount owed, or if the Region is otherwise aware that a Respondent may have an inability to pay, include information received by EPA in response to a CERCLA §104(e) request for financial information, or from other sources (*e.g.*, Dunn and Bradstreet reports).

5. Relief Sought

State relief sought. This generally will include the amount of future response costs demanded, plus interest running from the date of the demand until the date of payment at the rate specified by the AOC/Agreement. This may also include payment of stipulated penalties. If stipulated

penalties are sought, include suggested amount and justification. (If any additional causes of action are included, such as statutory civil penalties or collection of response costs beyond those required to be paid by the AOC/Agreement, evidence necessary to prove the elements of those causes of action must be provided.)

[Regional Letterhead]

APPENDIX I

MODEL FUTURE RESPONSE COST BILL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Date]

[Addressee]

RE: [_____ Site ("Site")], [Location]:
[Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. ____/Civil
Action No. ____ - _____]

Dear Sir and Madam:

The enclosed [invoice/bill] is submitted to you by the U.S. Environmental Protection Agency (EPA) for payment of the costs outlined herein. This [invoice/bill] includes an/a [accounting/statement] of the Future Response Costs¹ incurred by EPA [and the Department of Justice, on behalf of EPA,] for activities performed under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). This [invoice/bill] is solely for the recovery of EPA's [and DOJ's] Future Response Costs, including any accrued interest, for the [Site Name]. Any fines and/or penalties due will be billed separately.

EPA requests payment of the Future Response Costs contained in the enclosed [invoice/bill]. These Future Response Costs are recoverable from [Name of respondent/settling parties] pursuant to the provisions of the [Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. ____/Civil Action No. ____ - _____], Section [....] (Reimbursement of Response Costs). As required by the [Administrative Order/Consent Decree/122(h) Agreement], attached to the enclosed [invoice/bill] is a "Regionally Prepared Cost Summary Report" entitled, "Future Response Costs [date] to [date]" dated [insert date of summary report].² The report provides an/a [accounting/statement] of the Future Response Costs incurred by the [EPA/United States] in connection with the [Site Name] for which it seeks reimbursement.

¹ "Future Response Costs" refers to the definition as defined in EPA model agreements, please refer to the specific agreement for the proper characterization of costs.

² EPA model language uses the term "Regionally Prepared Cost Summary" (*See e.g.*, Section XVI, ¶55, of the Model RD/RA Agreement). However, the language of a specific agreement may vary from model language.

The stated amount of \$..... is due to be paid [on or before [Date]] or [within **XXXX** **days** of your receipt of this bill]. Please review and adhere to all procedures and requirements, as specified in the [Administrative Order/Consent Decree/122(h) Agreement], for making payment. Failure to pay the [invoice/bill] can subject you to an enforcement action [and penalties]. If you dispute any costs contained in the [invoice/bill], Section [.....] of the [Administrative Order/Consent Decree/122(h) Agreement] requires the [settling defendant/respondent] to: (1) notify EPA of the dispute within thirty (30) days of receipt of the [invoice/bill]; (2) deposit any disputed amounts into an interest bearing escrow account; and (3) pay undisputed amounts to EPA.³

Please make your check payable to:

EPA-Hazardous Substance Superfund

Forward your payment to:

EPA Region [...] Superfund Accounting
[Address for Regional Financial Group]

[If express mail or a messenger service will be used to deliver your payment, the street address of our bank is below:

[Environmental Protection Agency [R__]
[Address of Bank]]

To enable EPA to accurately record receipt of your payment by the established due date, the following information ***must be included*** on the face of your payment check:

[Site Name/Location: _____
Site Identification No.: _____
Account Number: _____
Receivable Account Number: _____
EPA Docket No. _____/Civil Action: No. __ - _____]

Interest will accrue at the current rate of [...%] on any amounts unpaid by the due date as stated in the [Administrative Order/Consent Decree/122(h) Agreement], Section [.....] (Reimbursement Response Costs). Failure to comply with the requirements of the reimbursement section may subject you to stipulated penalties as outlined in Section [....] [(Stipulated Penalties)] of the [Administrative Order/Consent Decree/122(h) Agreement]. Non-compliance will result in further collection efforts, which may include referral of the debt to the Department of Justice.

³ This is model language, please refer to the specific language in the agreement.

If you have any questions or problems regarding this [invoice/bill] should be directed to:

[Name of Agency Official]
U.S. Environmental Protection Agency (Mail Code)
[Regional Address]

Thank you for your cooperation.

Sincerely,
[Name of Agency Official]
[Title]
[EPA Office]

Enclosures

cc: [Financial Management Officer, U.S. EPA, Region ____]
[Assistant ORC/Legal Enforcement Staff]
[DOJ Assistant Section Chief]
[Cost recovery/Superfund program staff]

[INVOICE/BILL] FOR COLLECTION

To: [Name]
[Address]

Re: BD Number: _____

Description of Bill:

Recovery of Future Response Costs from [Date] to [Date] at the [Name of Site] pursuant to the [Administrative Order/Consent Decree/122(h) Agreement, EPA Docket No. ____/Civil Action No. ____ - ____], Section ____, ¶ ____, (Reimbursement of Response Costs). A Narrative Cost Summary Report is attached.

Payment Due Date: [Date]

BD Number: _____

Date: _____

Amount: _____

Total: _____

Please forward your payment to:

EPA Region [...] Superfund Accounting
[Address for Regional Financial Group]

Interest will be assessed at the rate of [...] on any amounts unpaid by the due date specified above. Please review and adhere to all procedures and requirements, as specified in Section [.....] (Reimbursement of Response Costs) for making payment and/or for disputing all or part of the costs contained in the cost summary.

[REGIONALLY PREPARED COST SUMMARY REPORT]
(SCORPIOS Summary Report)



U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION []

(Date)

{Sample} **MEMORANDUM**

SUBJECT: XYZ Site (SSID XX)

FROM: Person Responsible for Initiating Annual Bills

TO: Best Person to Review Costs (e.g., RPM/OSC)

The attached Planning Form, Documentation Checklist and un-certified cost summary are the initial step in the annual billing for the period on the Planning Form. Please complete the Planning Form by:

1. Carefully reviewing the cost summary to ensure all billable costs are identified (use the Documentation Checklist to indicate what costs may be missing from the summary).
2. Checking that the various costs on the summary report are recoverable as oversight costs in accordance with the applicable Order or Decree.

The Total Site Costs shown on the attached cost summary are an *estimate* only and may be different than the actual amount that will be billed. We anticipate sending the bill for these costs about three months after you return the attached documents to us.

Thanks for your help. If you have questions, please ask. To keep this bill on track for timely issuance, please **return the audited cost summary and completed Planning Form to me by (insert date).**

{Sample} CERCLA COST RECOVERY BILLING PLANNING FORM

Date Submitted to Finance:

Submitted by:

Site ID, Name:

CERCLIS #:

RPM/OSC:

Phone:

ORC Contact:

Phone:

Planned Cost Recovery Activity (mark applicable boxes)

- ☐ Case in Litigation
- ☐ Planned 107 Referral
- ☐ Planned RD/RA Negotiations
- ☐ Annual Billing
- ☐ Cost Recovery Negotiations (i.e., Rmvl, RI/FS, SNL, Demand Letter)
- ☐ State Superfund Contract Billing
- ☐ Other (specify):

Planning Information

Demand Letter(s) or SNL(s) for a specified amount were issued on (dates):

Calculate Prejudgement Interest from (M/D/Y): through (M/D/Y):

Do past cost recovery collections need to be addressed? Y N

Anything unusual about this site or past cost recovery action that may affect this planned cost recovery activity? Specify:

Cost Documentation Requested

Period: From (M/D/Y): To (M/D/Y):

Date Documentation Required:

- ☐ Certified Cost Summary (allow 6 weeks)
- ☐ Financial Documents (allow 6 weeks)
- ☐ Work Performed Documents (allow 12 weeks)

{Sample} CERCLA COST RECOVERY BILLING DOCUMENTATION CHECKLIST

Please review the attached SCORE\$ cost summary. The following contract type costs and/or IAG costs may be applicable for this site during the requested time period. For any contractor or IAG agency not appearing on the attached summary, please provide sufficient information below about the contractor or inter-agency (name, contract number, delivery order, etc.) to identify the costs that should be included in the cost summary.

CONTRACTS

| | |
|-------|--|
| ARCS | Alternative Remedial Contract Support |
| CLP | Contract Lab Program (VIAR) |
| EERU | Environmental Emergency Response Unit |
| EMSL | Environmental Monitoring Systems Laboratory (Lockheed) |
| ERCS | Emergency Removal Cleanup Services |
| ESAT | ENVIRONMENTAL SERVICES ASSISTANCE TEAM |
| ESS | Enforcement Support Services |
| FIT | Field Investigation Team |
| PRP | Potentially Responsible Party (Search) |
| RACS | Remedial Action Contract Strategy |
| REM | Remedial |
| ROC | Regional Oversight Contract |
| START | Superfund Technical Assistance Response Team |
| SCA | State Cooperative Agreement |
| TAG | Technical Assistance Grant |
| TAT | Technical Assistance Team |
| TES | Technical Enforcement Support |

INTER-AGENCY AGREEMENTS

| | |
|------------|---|
| ATSDR | Agency for Toxic Substance and Disease Registry |
| DOI | Department of Interior |
| DOJ | Department of Justice |
| DOT/USCG | U. S. Coast Guard |
| FEMA | Federal Emergency Management Agency |
| NOAA | National Oceanic and Atmospheric Administration |
| USCOE/ACOE | U. S. Army Corps of Engineers |

Additional contractor/inter-agency information specific to this site:

APPENDIX J

| <i>Chronological List of Selected Superfund Accounts Receivable Documents</i> | | |
|--|---|---|
| <i>Date</i> | <i>Title</i> | <i>Subject</i> |
| 1992 | Memorandum of Understanding Between the United States Environmental Protection Agency and the United States Department of Justice on Procedures for Remittance of Superfund Debts through the Department of Justice Lockbox System, February 13, 1992 | Establishes procedures for the collection and payment of certain Superfund response costs and penalties through the Department of Justice Lockbox system |
| 1998 | Plan for Achieving Timely Achieving Oversight Billing, OCFO, OSRE (April 7, 1998) | Establishes EPA goals to become current in oversight billing |
| 1998 | Effective Debt Management, OECA (July 16, 1998) | Identifies delays caused by untimely responses to financial management inquiries regarding accounts receivable and reminds Regional Counsel of the need for timely and accurate responses |
| 2000 | Reporting and Tracking Superfund Accounts Receivable, OCFO Comptroller Transmittal #00-05, (Jan. 11, 2000) | Provides updates in the area of Superfund accounts receivable management (<i>i.e.</i> , UAOs, AOCs) |
| 2000 | Improving Superfund Fiscal Management, Accounting and Cost Recovery, OECA, OSWER, OCFO (Sept. 29, 2000) | Prioritizes Superfund's cost recovery and accounting practices |
| 2000 | Delinquent Accounts Receivable: Interim Guidance on the Referral Process and Timing for Collection of Delinquent Debts Arising under Superfund Judicial or Administrative Settlements," OSRE, OCFO (Apr. 6, 2000) | Established interim guidance on referring delinquent Superfund Accounts (superceded by this guidance) |
| 2001 | Implementation of the pilot Senior Resource Official Performance Measure on Superfund Debt Collection, OSRE, OCFO (Sept. 25, 2001) | Established "pilot" performance measure regarding Superfund debt collection |
| 2001 | Compromise and Termination of Collection Activity of Debts Arising out of Superfund Judicial and Administrative Settlements and Judgments (Post-Settlement and Post Judgment Superfund Debts), OSRE, OCFO, DOJ-ENRD (Oct. 2, 2001) | Discusses the legal authority and process to compromise and terminate collection activity on debts arising out of Superfund settlements and judgments |
| 2002 | CERCLA Future Response Costs: Settlement, Billing and Collection, OSRE-RSD (June 20, 2002) | Addresses some of the most common issues that arise with the billing and collection of future response costs |